Supreme Court, U.S.
FILED
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CLERK

No. 99-474

IN THE

Supreme Court of the United States

ANDREW S. NATSIOS, SECRETARY OF ADMINISTRATION AND FINANCE OF THE COMMONWEALTH OF MASSACHUSETTS, AND PHILMORE ANDERSON, III, STATE PURCHASING AGENT,
Petitioners,

v.

NATIONAL FOREIGN TRADE COUNCIL,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

JOINT APPENDIX

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Petition Filed September 20, 1999
Petition Granted November 29, 1999

No. 99-474

IN THE

Supreme Court of the United States

ANDREW S. NATSIOS, SECRETARY OF ADMINISTRATION AND FINANCE OF THE COMMONWEALTH OF MASSACHUSETTS, AND PHILMORE ANDERSON, III, STATE PURCHASING AGENT,
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JOINT APPENDIX

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1:98cv10757
National Foreign v. Baker, et al
APPEAL{ED}

U.S. District Court
U.S. District Court - Massachusetts (Boston)

CIVIL DOCKET FOR CASE #: 98-CV-10757

National Foreign v. Baker, et al
Filed: 04/30/98
Assigned to: Chief Judge Joseph L. Tauro
Demand: $0,000 Nature of Suit: 950
Lead Docket: None Jurisdiction: Federal Question
Dkt# in other court: None

Cause: 28:2201 Declaratory Judgment

NATIONAL FOREIGN TRADE COUNCIL
Timothy B. Dyk
Plaintiff [COR LD NTC]
Robert H. Klonoff
[COR LD NTC]
Gregory A. Castanias
[COR LD NTC]
Melissa Hart

[COR LD NTC]
Jones, Day, Reavis & Pogue
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Jacqueline M. Holmes
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Michael A. Collora
[COR LD NTC]
Dwyer & Collora
600 Atlantic Ave.
Boston, MA 02110-2211
617-371-1000

v.

CHARLES D. BAKER, in his official capacity as Secretary of Administration and Finance of the Commonwealth of Massachusetts Defendant	Thomas A. Barnico [COR LD NTC] Attorney General's Office One Ashburton Place Room 1811 Boston, MA 02108 617-727-2200

Proceedings include all events.
1:98cv10757 National Foreign v. Baker, et al
APPEAL[ED]

PHILMORE IN HIS OFFICIAL CAPACITY AS STATE PURCHASING AGENT FOR THE COMMONWEALTH OF MASSACHUSETTS, III Defendant	Thomas A. Barnico (See above) [COR LD NTC]

U.S. CHAMBER OF COMMERCE E

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ORGANIZATION FOR INTERNATIONAL Andrew N Vollmer
INVESTMENT (See above)
Movant [COR LD NTC]
John A. Trenor
(See above)
[COR LD NTC]

James D. Smeallie
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EUROPEAN UNION David G. Leitch
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Proceedings include all events.
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APPEAL

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Proceedings include all events.
1:98cv10757 National Foreign v. Baker, et al

APPEAL

4/30/98 1 Complaint filed. Case assigned to Judge: Chief Judge Tauro. Receipt # 5909 Amount: $150.00. Fee Status: pd (cmg) [Entry date 05/01/98]

4/30/98 -- Summons issued for Charles D. Baker, Philmore Anderson III (cmg) [Entry date 05/01/98]

4/30/98 2 Motion by National Foreign for preliminary injunction, or, alternatively For Consolidation and Expedited Consideration of the Merits, FILED. (c/s) (cmg) [Entry date 05/01/98]

4/30/98 3 Memorandum by National Foreign in support of [2-1] motion for preliminary injunction, [2-2] motion For Consolidation and Expedited Consideration of the Merits, FILED. (c/s) (cmg) [Entry date 05/01/98]

4/30/98 4 Motion by National Foreign for leave to file in excess, FILED. (c/s) (cmg) [Entry date 05/01/98]

4/30/98 5 Motion by National Foreign for attys. Dyk, Klonoff, Castanias and Hart to appear pro hac vice, FILED. (c/s) (cmg) [Entry date 05/01/98]

5/1/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [4-1] motion for leave to file in excess. FILED. (cc/cl) (cmg)

5/1/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [5-1] motion for attys. Dyk, Klonoff, Castanias and Hart to appear pro hac vice, FILED. (cc/cl) (cmg)

5/1/98 6 Notice of appearance of attorney for Charles D. Baker, Philmore Anderson III by Thomas A. Barnico, FILED. (c/s) (cmg) [Entry date 05/04/98]

5/7/98 7 STIPULATION (Motion) by Charles D. Baker, Philmore Anderson III, to extend time to 14 days to respond to Motion for P.I., FILED. (c/s) (cmg) [Entry date 05/11/98]

5/11/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [7-1] stipulation motion to extend time to 14 days to respond to Motion for P.I., FILED. (cc/cl) (cmg)

5/11/98 8 Return of service executed as to Philmore Anderson III with service on 5/7/98 filed. Answer due on 5/27/98 for Philmore Anderson III (cmg)

[Entry date 05/12/98]

5/11/98 9 Return of service executed as to Charles D. Baker with service on 5/7/98 filed. Answer due on 5/27/98 for Charles D. Baker (cmg) [Entry date 05/12/98]

5/21/98 10 Answer by Charles D. Baker, Philmore Anderson III to complaint, FILED. (c/s) (cmg)

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Proceedings include all events.
1:98cv10757 National Foreign v. Baker, et al

APPEAL

6/2/98 11 Motion by National Foreign for protective order FILED. (c/s) (cmg) [Entry date 06/04/98]

6/2/98 12 Memorandum by National Foreign in support of [11-1] motion for protective order, FILED. (c/s) (cmg) [Entry date 06/04/98]

6/2/98 13 Affidavit of Frank D. Kittredge re: [11-1] motion for protective order, FILED. (c/s) (cmg) [Entry date 06/04/98]

6/2/98 17 Motion by National Foreign for Jacqueline Holmes to appear pro hac vice, FILED. (c/s) (cmg) [Entry date 06/22/98]

6/10/98 14 Memorandum by Charles D. Baker, Philmore Anderson III in opposition to [11-1] motion for protective order, FILED. (c/s) (cmg) [Entry date 06/11/98]

6/19/98 15 Chief Judge Joseph L. Tauro. Notice of Hearing/conference: set scheduling conference for 11:30 7/8/98 before Chief Judge Joseph L. Tauro. Joint statement to be filed five days prior to conf., FILED. (cc/cl) (cmg) [Entry date 06/22/98]

6/19/98 16 Chief Judge Joseph L. Tauro. Discovery Order entered: On or before 6/30/98, the parties shall have exchanged and reviewed all relevant documents in accordance with Local Rule 26.2(A) and sworn statements in accordance with Local Rule 26.1(B). Counsel to notify the court in writing 10 days prior to conf. of all pending motions, FILED. (cc/cl) (cmg) [Entry date 06/22/98]

6/22/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [17-1] motion for Jacqueline Holmes to appear pro hac vice, FILED. (cc/cl) (cmg)

6/29/98 -- STIPULATION (Motion) by National Foreign, Charles D. Baker, Philmore Anderson III setting deadlines for exchange of documents, FILED. (cmg)

6/29/98 20 Chief Judge Joseph L. Tauro. Stipulation entered re: exchange of documents, FILED. (cc/cl) (cmg) [Entry date 07/02/98]

6/30/98 18 Joint statement by National Foreign, Charles D. Baker, Philmore Anderson III, re: Local Rule 16.1(D), FILED. (c/s) (cmg) [Entry date 07/02/98]

6/30/98 19 Rule 16.1 Certification filed by Charles D. Baker, Philmore Anderson III, FILED. (c/s) (cmg) [Entry date 07/02/98]

7/2/98 31 Statement of counsel filed by National Foreign, Re: L.R. 26.1(B)(1) disclosure, FILED. (c/s) (cmg) [Entry date 07/13/98]

Proceedings include all events.
1:98cv10757 National Foreign v. Baker, et al

APPEAL

7/6/98 21 Motion by National Foreign to amend [1-1] complaint, FILED. (c/s) (cmg) [Entry date 07/07/98]

7/6/98 22 Memorandum by National Foreign in support of [21-1] motion to amend [1-1] complaint, FILED. (c/s) (cmg) [Entry date 07/07/98]

7/6/98 23 Statement of counsel filed by Philmore Anderson III, Re: Local Rule 26.1(B)(2), FILED. (c/s) (cmg) [Entry date 07/07/98]

7/7/98 24 Motion by U.S. Chamber of Com, Organization for Int for leave to file Amicus Curiae, FILED. c/s) (cmg) [Entry date 07/13/98]

7/7/98 25 Motion by European Union for leave to file Amicus Curiae Brief, FILED. (c/s) (cmg) [Entry date 07/13/98]

7/7/98 26 Motion by European Union for R. Weiner, D. Leitch, R. Alford to appear pro hac vice fee status: pd fee amt: $50.00 Receipt # 7487, FILED.(c/s) (cmg) [Entry date 07/13/98]

7/8/98 27 Chief Judge Joseph L. Tauro. Protective Order entered, FILED. (c/s) (cmg) [Entry date 07/13/98]

7/8/98 -- Scheduling conference held. (cmg) [Entry date 07/13/98]

7/8/98 29 Chief Judge Joseph L. Tauro. Clerk's Notes: re: scheduling conf. Amicus Briefs Allowed. Motions to appear Pro Hoc Vice Allowed. Motion for Protective Order Allowed, Order entered. Dates in joint statement adopted. Motion to amend held in abeyance. Set status conference for 10:00, 9/23/98, before Chief Judge Joseph L. Tauro Court

Reporter: B. Sakurai. (cmg) [Entry date 07/13/98]

7/9/98 28 STIPULATION (Motion) by Washington Legal, for leave to file Amicus Curiae Brief, FILED.(c/s) (cmg) [Entry date 07/13/98]

7/9/98 30 Chief Judge Joseph L. Tauro. Order entered granting [25-1] motion for leave to file Amicus Curiae Brief; granting [24-1] motion for leave to file Amicus Curiae; granting [11-1] motion for protective order. The parties may treat Pltf's Motion for a Preliminary Injunction as the Pltf's Motion for S/J and opening briefs in support thereof. Pltf's stipulation of facts to be filed by 7/22/98. Deft's may file cross motion for S/J by 7/22/98. Pltf may file reply brief by 8/5/98. Set status conference for reset to 10:00 9/23/98 before Chief Judge Joseph L. Tauro, FILED.(cc/cl) (cmg) [Entry date 07/13/98]

Proceedings include all events.
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7/13/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [26-1] motion for R. Weiner, D. Leitch, R. Alford to appear pro hac vice fee status: pd fee amt: $50.00 Receipt # 7487, FILED. (cc/cl) (cmg) 7/13/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [28-1] stipulation motion for leave to file Amicus Curiae Brief, FILED. (c/s) (cmg) [Entry date 07/16/98]

7/13/98 32 Amicus Curiae brief by Washington Legal, FILED. (c/s) (cmg) [Entry date 07/16/98]

7/15/98 33 Document disclosure by National Foreign, FILED. (c/s) (cmg) [Entry date 07/16/98]

7/20/98 34 Joint motion by National Foreign, Charles D. Baker, Philmore Anderson III to amend [30-1] order establishing filing schedule, filed. (mr) [Entry date 07/21/98]

7/23/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [34-1] joint motion to amend [30-1] order establishing filing schedule. The parties shall file their joint stipulation of facts no

later than 7/24/98; set cross motion filing for summary judgment deadline for 7/27/98 and responsive brief no later than 7/27/98; reply brief by 8/13/98. (cc/cl) (tmc) [Entry date 07/24/98]

7/24/98 35 STIPULATION of facts by National Foreign, Charles D. Baker FILED. (c/s) (cmg) [Entry date 07/27/98]

7/24/98 36 Transcript of proceedings for held on proceeding date: 7/8/98 before Judge: Chief Judge Tauro. Court Reporter: Barbara Sakurai (cmg) [Entry date 07/27/98]

7/27/98 37 Motion by Charles D. Baker, Philmore Anderson III for summary judgment and Statement of Undisputed Material Facts FILED. (c/s) (cmg) [Entry date 07/28/98]

7/27/98 38 Memorandum by Charles D. Baker, Philmore Anderson III in support of [37-1] motion for summary judgment and Statement of Undisputed Material Facts, FILED. (c/s) (cmg) [Entry date 07/28/98]

7/27/98 39 Affidavit of Harold Fisher re: [37-1] motion for summary judgment and Statement of Undisputed Material Facts, FILED. (c/s) (cmg) [Entry date

07/28/98]

7/27/98 40 Affidavit of Kathleen Molony re: [37-1] motion for summary judgment and Statement of Undisputed Material Facts, FILED. (c/s) (cmg) [Entry date 07/28/98]

7/27/98 41 STIPULATION by Charles D. Baker, for leave to file memo in excess of 20 pages, FILED. (cmg) [Entry date 07/28/98]

Proceedings include all events.
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7/27/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [24-1] motion for leave to file Amicus Curriae. FILED. (cc/cl) (cmg) [Entry date 07/28/98]

7/27/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [25-1] motion for leave to file Amicus Curiae Brief FILED. (cc/cl) (cmg) [Entry date 07/28/98]

7/27/98 42 Amicus Curiae brief by U.S. Chamber of Com, FILED. (c/s) (cmg) [Entry date 07/28/98]

7/27/98 43 Amicus Curiae brief by National Foreign, filed. (cmg) [Entry date 07/28/98]

8/10/98 -- Mail sent to Daniel J. Popeo returned by Post Office because: attempted, not known. (cmg) [Entry date 08/25/98]

8/13/98 -- Mail sent to Daniel J. Popeo returned by Post Office because: attempted, not known. (cmg)

8/13/98 44 Response by National Foreign in opposition to [37-1] motion for summary judgment and Statement of Undisputed Material Facts, FILED. (c/s) (cmg) [Entry date 08/14/98]

8/13/98 45 Supplemental Affidavit of Frank D. Kittredge, re: [44-1] opposition response, FILED. (c/s) (cmg) [Entry date 08/14/98]

8/25/98 -- Mail sent to Daniel J. Popeo returned by Post Office because: attempted, not known. (cmg)

9/15/98 46 Letter by Michael A. Collora, dated: 9/14/98 to: Z. Lovett re: Hearing on 9/23/98 filed. (mr)

11/4/98 47 Chief Judge Joseph L. Tauro. Memorandum and Order entered. The plaintiff's motion for summary judgment and its unopposed motion to amend the compalint are ALLOWED. The Defendant's cross motion for sumary judgment is

DENIED. (see order for details) cc/cl (mr) [Entry date 11/05/98]

11/4/98 48 Chief Judge Joseph L. Tauro. Order entered denying [37-1] motion for summary judgment and Statement of Undisputed Material Facts, granting [21-1] motion to amend [1-1] complaint, mooting [2-1] motion for preliminary injunction, mooting [2-2] motion For Consolidation and Expedited Consideration of the Merits. (motion for preliminary injunction and motion for consolidation and expedited consideration of the merits treated as plaintiff's motion for summary judgment.) Plaintiff's motion for summary judgment (#2) is ALLOWED. cc/ccl (mr) [Entry date 11/05/98]

11/13/98 49 Motion by National Foreign for final judgment and Declaratory relief, filed. c/s (mr) [Entry date 11/16/98]

Proceedings include all events.
1:98cv10757 National Foreign v. Baker, et al

APPEAL

11/17/98 50 Chief Judge Joseph L. Tauro. Judgment entered for National Foreign against Charles D. Baker, Philmore Anderson III., cc/cl (mr) [Entry

date 11/18/98]

11/18/98 -- Case closed. (mr)

11/23/98 51 Notice of appeal by Charles D. Baker, Philmore Anderson III filed. Fee Status: pd Fee Amount: $105.00 Receipt # 321 10574 Appeal record due on 12/23/98 (Appealing judgment on 11/17/98). (mmh) [Entry date 11/24/98]

11/23/98 -- Copy of Notice of Appeal mailed to all counsel of record. Transcript Notice and Order form provided to appellant's counsel. (mmh) [Entry date 11/24/98]

11/23/98 52 Defendants' certificate regarding completion of transcript. (mmh) [Entry date 11/24/98]

11/23/98 55 Motion by Charles D. Baker, Philmore Anderson III to stay pending appeal, FILED. (c/s) (cmg) [Entry date 12/08/98]

11/25/98 53 STIPULATION (Motion) by National Foreign, to extend time to request attys' fees, FILED. (c/s) (cmg) [Entry date 11/30/98]

12/4/98 54 Transcript of proceedings for held on proceeding date: 9/23/98 before Judge: Chief Judge Tauro. Court Reporter: Barbara Sakurai. (cmg)

12/4/98 -- Mail sent to Daniel Popeo returned by Post Office because: moved, not forwardable. (cmg)

12/7/98 56 Memorandum by National Foreign in opposition to [55-1] motion to stay pending appeal, FILED. (c/s) (cmg) [Entry date 12/08/98]

12/14/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered granting [53-1] stipulation motion to extend time to request attys' fees, FILED. (cc/cl) (cmg) [Entry date 12/15/98]

12/14/98 -- Chief Judge Joseph L. Tauro. Endorsed Order entered denying [55-1] motion to stay pending appeal. The defts having filed a Notice of Appeal on 11/23/98, this motion is Denied as moot, FILED. (cc/cl) (cmg) [Entry date 12/15/98]

12/16/98 -- Transmitted supplemental record on appeal: re: [51-1] appeal (Appeals case manager supplemented documents #51, 53, 55 & 56 to the USCA). (mmh)

[END OF DOCKET: 1:98cv10757]

Relevant
Docket Entries

Andrew S. Natsios,
Secretary of Administration
and Finance, and another,
Appellants,

v.

National Foreign Trade Council,
Appellee.

United States Court of Appeals
for the First Circuit
No. 98-2304

12/22/98 CIVIL case docketed. Notice filed by Thomas A. Barnico for Appellant Frederick Laskey.

12/11/98 RECORD ON APPEAL filed:
2 volume and IMPOUNDED ENVELOPE IN SAFE.

12/17/98 SUPPLEMENTAL RECORD consisting of document nos. 51, 53, 55 & 56 filed.

12/29/98 APPELLANT's BRIEF and APPENDIX filed on behalf of Frederick Laskey, Philmore Anderson.

3/4/99 BRIEF filed by Appellee National Foreign Trade Council.

3/4/99 DISCLOSURE STATEMENT on behalf of Appellee National Foreign Trade Council filed.

3/18/99 REPLY BRIEF filed by Appellant Frederick Laskey, Appellant Philmore Anderson.

5/4/99 CASE ARGUED 05/04/99. Lynch, Coffin, Cyr, JJ.

6/11/99 LETTER filed by appellant regarding case caption.

6/11/99 Order December 30, 1999 filed. This court having been advised that defendant Laskey has been replaced by a new Secretary of Administration and Finance. It is ordered that the name of Frederick Laskey be replaced with the name Andrew S. Natsios in the caption of this case.

6/22/99 OPINION filed. Lynch, Coffin, Cyr signed Judge Sandra L. Lynch, Authoring Judge PUBLISHED.

6/22/99 JUDGMENT filed. Judges Lynch, Coffin, Cyr. Closing case.

7/15/99 MANDATE ISSUED.

7/15/99 RECORD returned to originating court.

9/23/99 U.S. Supreme Court Notice filed regarding petition for writ of certiorari. Filed in the Supreme Court on 09/20/99. Supreme Court case number: 99-474.

12/2/99 U.S. SUPREME COURT ORDER granting petition for writ of certiorari filed in the Supreme Court on 11/29/99.

The Commonwealth of Massachusetts
House of Representatives

BYRON RUSHING
Chair, The Committee on Public Services
Vice Chair, House Committee on Redistricting
State House - Room 39
Boston, MA 02133-1853
(617) 722-2240
Ninth Suffolk District
Alice Taylor
Copley Place
Roxbury
Lower Roxbury
Prudential
St. Botolph
South End

February 28, 1995

Representative Christopher Hodgkins
Senator Warren Tolman
Chairmen
Committee on State Administration
State House - Room 34
Boston, MA 02133

Dear Representative Hodgkins and Senator Tolman:

I am writing you in support of H. 2833, an Act to Regulate

State Contracts With Companies Doing Business in Burma. Its passage would add our state to the various governments supporting the restoration of democracy in Burma.

In the free elections in Burma in 1990, the National League for Democracy led by Nobel Peace Prize laureate, Aung San Suukyi, received 80 percent of the votes cast. Since that time Suukyi has been under house by the martial administration law known as "SLORC" (State Law and Order Restoration Council). This military junta has committed well-known human rights violations including the systematic murder, rape, and torture of civilians, and drug trafficking. According to the Burma Rights Movement for Action Group, "SLORC" has managed to survive through revenues generated by foreign investments and by a market for the export of the nation's natural resources. Burton Levin, the Former U.S. Ambassador to Burma, explains that "foreign investment in most countries act as a catalyst to promote change, but the Burmese Regime is so single minded that whatever they might obtain from foreign sources they pour straight into the army while the rest of the country is collapsing."

H.2833 establishes a "selective purchase" program for state vendors doing business in Burma. It is based on the "selective purchase" program used so effectively by this state to put pressure on the pro-apartheid government of South Africa. The Secretary of Administration and Finance would compile a list of businesses that do business in Burma. Persons with operations in Burma for the sole purpose of reporting news, providing international telecommunications, and disseminating

medical supplies would be exempt. Otherwise companies on the list would be awarded a contract only if their bids are 10% or less than the bids of companies not doing business in Burma. Goods and services could also be procured from a company when a state agency certifies to the Secretary of Administration and Finance that the procurement is vital to the operations of the state agency.

Considering the deterioration of human living conditions in Burma, where military generals have stolen an entire country's resources and population through force, the Commonwealth of Massachusetts should not provide contracts to companies that do business with this dictatorship government. The Commonwealth has a history of assisting fledgling, democratic movements throughout the world. Burma calls on our support now.

The new South Africa demonstrates that economic pressure can be effective in moving governments away from oppression. Continued pressure from Massachusetts is necessary to vigorously combat well documented repression and intolerance in Burma.

I enclose recent news articles on the situation in Burma and on Reebok's and Liz Claiborne's decisions to cut ties with the SLORC government.

Yours truly,
/s/
Byron Rushing

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil No. 98-CV-10757-JLT

NATIONAL FOREIGN TRADE COUNCIL,	)
Plaintiff,	)
v.	)
CHARLES D. BAKER, in his official capacity as Secretary of Administration and Finance of the Commonwealth of Massachusetts, et al.,	)
Defendants.	)

DECLARATION OF LINDA BERNIS

I, Linda Bernis, hereby depose and state as follows:

1. I am a stenographer who works as an independent contractor for O'Brien & Levine, a court reporting services agency located at 1287 Commonwealth Avenue, Boston, Massachusetts.

2. On April 17, 1998, I viewed portions of three videotapes in the Special Collections Department of the State House Library in Boston, Massachusetts and made true and accurate

shorthand notes of the audio from these videotapes.

3. The attached transcript is a true and accurate version of the shorthand notes I made from the videotapes I viewed on April 17, 1998. See Exhibit A.

SWORN TO AND SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 25th DAY OF APRIL, 1998.

/s/
Linda Bernis

(HOUSE DEBATE ON H2833: July 19, 1995)

HOUSE SPEAKER: The first matter passed over is on page 21, calendar item number 759. Third reading of the bill.

THE CLERK: An Act Regulating State Contracts with Companies Doing Business With or in Burma/Myamar.

HOUSE SPEAKER: Question comes on passing the bill to be engrossed pending which Representative Rushing offer an amendment which the clerk will read.

THE CLERK: Mr. Rushing of Boston moves that the bill be amended in section one as printed by inserting after the word "having" in line 13 the words "a principal place of business place of incorporation or corporate headquarters in Burma Myamar or having" and in section two as printed by striking out the paragraphs contained in lines 1 to 25 inclusive.

HOUSE SPEAKER: The question comes in the amendment. All in favor say aye. All opposed say no. The ayes have it. Recurring question comes on passing the bill to be engrossed. Mr. Teague of Yarmouth offers an amendment which the clerk will read.

THE CLERK: Mr. Teague moves the bill be amended in section one, lines 12, 15, 18, 25,

26, 28, 34, 35, 39 and 42, in section two, lines 8, 13, 59, 78, 79, 84 and 94, and in section four, line 10, by inserting after the word "Myamar" in each instance insert the words "and/or China."

HOUSE SPEAKER: The question comes on the amendment. Mr. Teague of Yarmouth. Members kindly take a seat.

HOUSE SPEAKER: The question comes on the amendment, Mr. Teague of Yarmouth.

MR. TEAGUE: Thank you, Mr. Speaker. I hope the amendment is adopted.

Mr. Speaker, from time to time over the years Massachusetts General Court, this is no laughing matter, has decided to engage in their own little version of foreign policy by restricting investments, primarily from our state pension funds and prohibiting pensions in policies we find offensive. There are many of those.

The gentleman from Boston has filed a bill to impose such restrictions with respect to Burma, a nation ruled by a tyrant where there is much turmoil and restriction on human rights of various sorts. However, it is not alone in those offenses against humanity and against its citizens and sojourners. I would suggest

that there are nations that have track records which are yet more reprehensible, more rigid, less understanding, more demanding and more patently offensive to our understanding of human rights and dignity, which is why I offer this amendment to include China, mainland China.

Mr. Speaker, as we talk, there is an American citizen, a naturalized American who was born in mainland China named Harry Wu, who has in fact been active on the Asian continent, and in asking the Chinese government to provide what we would consider minimal human right sand constitutional guarantees to its people.

Mr. Speaker, Harry Wu has been arrested by the Chinese government and is held incommunicado on a spurious charge that he is an illegal immigrant based on the claim that the name on his passport is not the same as his given English name, Peter Harry Wu. And Mr. Speaker, the sole reason for that is because he has been outspoken with regards to the persistent intentional policy of human rights violations that is the standard operation of the government of mainland China.

Mr. Speaker, if we are to begin engage in foreign policy restrictions and prohibitions, if we are to trek down that

route, I think we ought to start with the most egregious and certainly the regime currently ruling the nation of Burma is offensive. In the past we've had restrictions on investments in Northern Ireland, in South Africa because of the offensive political activity restrictions on individual liberty in those nations. None of us tolerate those very well, but if we are going to get into that business then I say let's start at the top.

And Mr. Speaker, I don't think anybody is going to stand here and defend the nation of China. And if we are to do a comparative analysis, and obviously we are because among the nations of the world we are selecting Burma as the one nation that we should consider for restrictions that our investments, if we are to do that type of comparative analysis, let's really do an analysis and look at some of the nations who have as their official policy for a period of 45 to nigh unto 50 years now, a rigid, in some cases cruel abuse of human rights in the most essential aspects, restriction on individual mobility, restriction on freedom of religion, restriction on freedom of the press. All manner of impositions on individual liberty.

Mr. Speaker, the reason Harry Wu

is locked up is because he's there talking about human rights. He's an American. If they do that to an American, think of what they do to their own people and what they've done for the last 50 years.

If this bill, which restricts investments here in Massachusetts so as to prohibit offensive nations from benefiting from the public funds of the Commonwealth, has merit, then I say we should do first things first.

Mr. Speaker, in this particular case, I would say that China has amply demonstrated their scorn for what we consider typical standards of human dignity and civility and the case of Harry Wu demonstrates that. Mr. Speaker I hope the amendment is adopted..

HOUSE SPEAKER: Mr. Rushing of Boston.

MR. RUSHING: Mr. Speaker, the first thing I want to do make is very clear what this legislation does. What this legislation does is that it establishes a program that is called selective purchase in regard to the country of Burma. It does that for a simple reason. We, in this legislature, have the proud reputation of being one of the leaders in this country and in this world in being of joining in the movement

to restore democracy in South Africa, and we learned in that process two things. One is, that if you're going to engage in foreign policy, you have to be very specific. You have to be very specific. And you have to be able, you have to be able to identify a goal that you will know when it is realized. We identified a goal around South Africa. That goal was to end apartheid and we would know when it was realized when there were elections in that country that every person could participate in.

When that happened, and for our piece of that we had various forms of state sanctions in Massachusetts for 12 years, 12 years. And when that identifiable event occurred, we ended all of our sanctions that we had created here. Burma is a country that was in the process of restoring democracy. It had at first a left wing, a socialist totalitarian regime. There was a movement to restore democracy. That movement became more and more successful, and in 1989 the leader of that movement was placed under house arrest.

In 1990 that leader's party won a democratic election overwhelmingly, and the people elected in that election were never allowed to sit, and instead Burma

was overtaken by a right wing totalitarian regime. That right wing totalitarian regime is a regime that is in power now. It is a regime that has killed literally thousands of its country's people, and it is that regime that the democratic movement in Burma is attempting to overthrow and to again have free elections in that country. That is what the identifiable goal is, free democratic elections in Burma.

The other thing we understood and learned from in South Africa was that there had to be a clear movement outside of that country, exiles outside of that country who were working for these goals so that there was always people in countries where they could communicate and we would be able to be in some communication with the forces that wanted to restore democracy.

We all here in this state, Democratic and Republican, can now go around the world bragging, literally bragging about what a wonderful thing we did when we joined in that international movement to end apartheid in the United States, in South Africa, and we should. We should be proud of that.

The governor of Massachusetts is going to South Africa next month. He is

going to South Africa next month. All of the major leaders of South Africa are going to meet with the governor of Massachusetts when he is in South Africa for four days, not because he is the descendent of Cromwell's chaplain. They are going to meet with the governor because he is the governor of Massachusetts, the state that was one of the first in this country to begin sanctions against South Africa.

There were two major forms of sanctions that we took. We ended all of our investments in our pension funds in companies that did business in South Africa. The other sanctioning that we did was what we are proposing in this bill in regard to Burma. We said that the state would not buy any goods and services from companies that do business in South Africa.

HOUSE SPEAKER: Mr. Teague of Yarmouth. For what purpose does the gentleman rise? The gentleman yields. Mr. Teague of Yarmouth.

MR. TEAGUE: I appreciate the gentleman yielding because I am interested in the history. Some of the members may not be familiar with it. What I am more interested in is, given the gentleman's objection to the regime in Burma and his

interest in restoring democracy there, does he have the same interest in restoring democracy with regards to China where the regime is at least as offensive, if not more so, and is he thereby willing to adopt the same standards with respect to China as with respect to Burma, given the successful efforts we have had in the past.

HOUSE SPEAKER: Mr. Rushing of Boston.

MR. RUSHING: What the gentleman from Yarmouthport does not want to hear is the rationale for this legislation, because I'm going to answer his question, because his question is what the amendment is and this happened by his predecessors in this house who were opposed to any action by this house around anti-apartheid. Every time we brought up a bill related to South Africa, the Republican leadership would have tried to amend it by adding every other dastardly nation in the world. And what does that do?

HOUSE SPEAKER: Mr. Teague of Yarmouth. What purpose does the gentleman rise? Gentlemen yields.

MR. TEAGUE: Thank you, Mr. Speaker. I appreciate the gentleman's kindness in yielding. Mr. Speaker,

perhaps the reason that some of these nations flourish under the conditions they do is because the legislature has not taken the same initiative having claimed to do so in these other cases of the dastardly nations that you so properly identify. Then perhaps we should grasp this opportunity to incorporate them into this legislation subjective to the same rigid standards as you yourself identify have been successful and thereby turn them around.

I am wondering if the gentleman will join me in that effort because failing that then perhaps change will come more slowly if not at all. If the gentleman is willing to join towards that end.

HOUSE SPEAKER Mr Rushing of Boston.

MR. RUSHING: The minority leader should know this, that I will absolutely join him in that, but what I am not going to do that, what I am not going to do is to trivialize the movement for restoring democracy in Burma by adopting these amendments, and I will tell you why. I will tell you why. And this is why Because you have never filed a bill to do that. You have never filed a bill to say that this legislature should engage in the

movement to restore democracy in China.
You have never talked about a bill to reject, to restore democracy in North Korea. You have never filed a bill. You know why? I know that because there's never been a hearing on any of those bills.
HOUSE SPEAKER: What purpose does the gentleman rise? Gentleman yields. Mr. Teague of Yarmouth.
MR. TEAGUE: Thank you, Mr. Speaker. The gentleman is quite correct, I haven't filed a bill to that measure, nor did I file a bond bill to construct prisons which we just debated this afternoon. Nonetheless, amendments were offered. There is no corner on the market for good ideas, but it appears that the gentleman's point that there are regimes that impose extraordinary standards on their citizens, and the gentleman says that he is opposed to that type of behavior by nations.
If that is to be the case, then ought we not look at other nations and attempt to be uniformed in our application. Quite frankly, if we did that then perhaps we might have the desired effect. You well illustrated the case of South Africa in which we participated. You suggest trivializing.

It is not trivial when a nation has American citizens incarcerated specifically because they are out pursuing human rights initiatives in that nation. I don't think that is trivial. I think that is substantial with the same substance as the measure in front of us which is why I offer the amendment.
HOUSE SPEAKER: Mr. Rushing of Boston. Gentleman yields.
MR. RUSHING: You missed my point. My point is, if you take this stuff serious, if you work on this stuff, one of the things you do is you draft legislation that is useful for the movement of people who are attempting to do the particular task they are involved in.
The legislation that we did for South Africa was designed so that it would be useful for the forces for the pro-democracy and anti-Apartheid forces in South Africa. It was what they wanted. It was what they wanted. Now you tell me what the pro-democracy forces in North Korea want. You tell me that. You answer that question for me. And you don't know the answer to that because you haven't talked to them about it.
HOUSE SPEAKER: The house will be in a brief recess.

HOUSE SPEAKER: Recurring questions comes on ordering the bill to a third reading. All those in favor say aye. All opposed no. The ayes have it. The bill is ordered to a third reading.

(SENATE DEBATE ON H2833: March 20, 1996.)

SENATE PRESIDENT: The present item passed over is item 665 on the first page. The senator from Hampden and Hampshire, Mr. Lees.

MR. LEES: I move that this matter be postponed for three weeks.

SENATE PRESIDENT: The senate will come to order. The senator from Hampden and Hampshire, Mr. Lees.

MR. LEES: Mr. President, I would withdraw that motion. And Mr. President, I am very curious why members of this legislature, if it's so good, why isn't the Congress of the United States doing it? Why isn't the president of the United States saying Burma ought to be put into this? But, no, we, Mr. President, and the Massachusetts legislature tried to set up some foreign policy business guidelines, so because of that I move the matter be laid upon the table.

SENATE PRESIDENT: The senator from Hampden and Hampshire has asked

unanimous consent to withdraw his motion that the matter be postponed until April 10th. Is there an objection to his request to withdraw his motion? The chair hears none.

The senator from Norfolk and Suffolk, Ms. Walsh.

MS. WALSH: The minority leader may be pleased to learn the Federal Government gets many of its best ideas from the Commonwealth of Massachusetts, including its constitution, so we look forward to the future debate on how we can advance civil and human rights in the country of Burma by our business dealings with the Commonwealth of Massachusetts. Thank you, Mr. President.

SENATE PRESIDENT: The senator from Hampden and Hampshire, Mr. Lees.

MR. LEES: If it's such a great idea then maybe the senator who just took her seat could ask the president of United States to put it in his foreign policy guidelines and business guidelines, but I don't know why we continue to try to hurt Massachusetts business while the federal government, if it's such a great thing to do, doesn't do it.

Again, Mr. President, I think this matter should be laid upon the table.

SENATE PRESIDENT: The matter before the body is on the motion of the senator from Hampden and Hampshire to lay the matter on the table. All those in favor. Under the rules placed in the orders of the day for the next session.

(SENATE DEBATE ON H2833: April 10, 1996.)

SENATE PRESIDENT: The next item passed over is item 6635. The main question being on bill to a third reading. Coming first on the motion previously moved from the senator from Hampden and Hampshire to lay the matter on the table. Ten minute debate, 3 minutes per senator. The senator from Middlesex, Ms. Hicks.

MS. HICKS: I hope this matter is laid upon the table. There has been extensive discussion on this, and I must admit, I continue to come back to the same conclusions that this is ill-recommended legislation. This particular body has no particular responsibility to make a statement on this, what is certainly an international matter.

If this is so important to the Commonwealth of Massachusetts, why hasn't our congressional delegation acted and come forth with something in the

appropriate forum, which would be the U.S. Congress, to do something about these, no doubt, atrocities and human right abuses that have taken place in Burma.

We have no committees within this legislature that would review such matters as our essentially prohibiting our companies in Massachusetts with doing business there. We do not know how this would directly affect jobs in Massachusetts. We do not know how this would affect our export picture, which I believe the sponsors of this legislation claimed to be concerned about. Clearly, this is not a matter that's appropriate for us to take up, not now or any other time.

I also have to raise the question of it may be very well to single out South Africa, but Burma is no South Africa. As a matter of fact, I do not understand the argument as to why there aren't any number of other countries around the world where we have the same types of offenses taking place, same types of human rights abuses occurring. I do not understand the rationale of why we have to take this up, why we need to get into this matter at all.

Mr. President, I would hope that the sponsors of this legislation would

take another look at this, and for us to concentrate and focus our efforts on creating jobs here at home and not try to dabble in foreign affairs. I hope this matter is laid upon the table where it should stay.

SENATE PRESIDENT: The senator from Norfolk and Suffolk, Ms. Walsh.

MS. WALSH: Thank you, Mr. President. I can certainly understand the confusion and even the difficulty in appreciating why this matter would be before this body. And when I was first approached to sponsor this legislation, I had some of the same questions. My answer is simply this. It is a small world.

As a matter of fact, I have to speak with direct discussion of the current administration that has been so mindful and aggressive in seeking a global economy. That has had many international trips in good faith to encourage Massachusetts business arrangements, not just within the confines of the United States of America, but all over the entire globe. The fact is that we have in countries like Burma horrific serious human right violations, and that we have an opportunity through business to promote and exacerbate the most horrible dehumanization of people we can ever

imagine.

And we also have the capacity to be mindful that tax dollars in Massachusetts can either stop the violation of human rights or they can promote the protection of human rights. This legislature has had a very, very distinctive and proud history of recognizing the connection of the dots, of realizing that what Massachusetts does affects the country, affects the world. Our governor is particularly mindful of that in trying to enhance international business activities for Massachusetts.

In South Africa in the late 1980's this legislature passed similar sanctions. We educated one another, and we learned how American businesses who have contracts with the Massachusetts government are promoting atrocious human rights violations in other countries. And we became aware that we are a party and unwitting conspirator to those kinds of exploits and we pass sanctions. And those sanctions had an effect in other cities, and other states also passed sanctions.

Two years ago this legislature retreated and repealed those sanctions because the government in South Africa smelled the coffee and changed their policy and they found religion through

economic inconvenience and hardship.

The important thing about this proposal is that it recognizes human rights also. There are actually in this proposal certain exceptions. We don't prohibit medical relief. We don't prohibit news releases and other kinds of newspaper and public information. We don't prohibit any real property transactions that protect public health and public safety. It's very reason, very rational. It's an extension of our recognition of a global economy.

We also did this in Northern Ireland. It took four years, but we recognized that there are people in Northern Ireland, because of the religious affiliation who are seated beside another religious affiliation and make half the wage. Can't get a health plan. Provide and promote the same kinds of service for that community and are treated less than human. Those are the so-called McBride principles.

We recognize this government of Massachusetts subsidizes bad practices through their contracts. And we have passed a law, it's a varied version of the McBride principles, to put on notice that we are not going to promote those bad practices. And what this is, is a

message, a clear message that the government of Massachusetts will not do business with businesses that exploit and do business with military government in Burma.

This is a rational, a well grounded piece of legislation. It is authored by people who have worked formally and officially with the United Nations that have sought our help. We have much information we can offer you. This is only a debate on laying it on the table.

Furthermore, what is our role here? It is the people at the local grass roots effort that fight the wars and raise the armies. It is the states and the colonies that built this national government. It is the people closest to the pain that sometimes first rise to the solution.

I offer, as one member of this body, that we recognize the responsibility and opportunity we have to send a very appropriate and simple message to be helpful for Civil Rights across the globe with our dollars. The dollars of our government to help promote and stand for civil and human rights.

I ask for that reason that this bill that has already passed the house be

permitted to be debated and discussed here today Thank you, Mr. President.

SENATE PRESIDENT: The senator from Plymouth and Norfolk, Mr. Hedlund.

MR. HEDLUD: I hope the motion to lay on the table is not adopted, and I want to respond to a couple of points that my good friend from Wayland made.

First, she spoke of the fact that we have, as a legislative body, no role in this issue. I don't agree with that. I think the point made by my colleague from West Roxbury about our moral obligation is a valid point, and argument can be made that much of what we do in this body we have no role injecting ourselves into.

I think last week we saw legislation filed that would regulate the construction of barges which may be an interstate commerce issue that we as a state may not have a role in any say. So I think much of what we deal with -- we could have talked about tobacco labeling contents. We may not have a responsibility or role to be involved in that, but we do interject ourselves in these kinds of issues. And I think this is one that is a valid issue.

My colleague compared the situation in South Africa to that of Burma. The situation in Burma is

infinitely worse than what has gone on in recent decades in South Africa. There is no comparison.

And just a little background. There are two minorities in Burma, the Shan and the Corem, that fought with the allies in World War II, were promised support after World War II for an independent state and were betrayed by western nations. Those people have been subjected to genocides by the ruling military regime in Burma.

In fact, they have been using United States-supplied helicopters that were supposed to be used for drug eradication programs which have been turned on their own people in attempting to completely wipe out those minorities in eastern Burma. So I think it's a small, small action that this body can take but one that is warranted.

As my colleague from West Roxbury said, we got a long proud tradition. Whether it's the Fugitive Slave Acts. The legislation we dealt with last year with China, there is precedent here.

I hope the motion to lay on the table is not adopted and do debate this bill and seek passage of this bill. Thank you, Mr. President.

SENATE PRESIDENT: On the motion

to lay on the table, all those in favor say aye, opposed no. The no's have it. The motion to lay on the table does not prevail.

The question now comes on ordering the bill to a third reading. All those in favor say aye. Opposed no. The ayes have it. The bill is ordered to a third reading.

Commonwealth of Massachusetts Executive Department
Press Release

WELD, CELLUCCI SIGN BURMA BILL
First State in Nation to Impose Economic Sanctions

Governor William Weld and Lieutenant Governor Paul Cellucci today signed the Burma Bill placing Massachusetts in the lead of a growing nation-wide campaign to impose economic sanctions on Burma's tyrannical regime.

"One law passed by one state will not end the suffering and oppression of the people of Burma, but it is my hope that other states and the Congress will follow our example, and make a stand for the cause of freedom and democracy around the world," said Weld.

"Due to a steady flow of foreign investments, including those of some US companies, this brutal military regime has been able to supply itself with weapons and portray itself as the legitimate government of Burma. Today is the day that we call their bluff," said Cellucci.

The bill prohibits the Commonwealth from procuring goods or services from firms that do business in Burma. Under the new law, a list of restricted companies would be maintained by the Executive Office of Administration and Finance.

"Enactment of this legislation is a major breakthrough in Burma's struggle for freedom," said Zarni, a Burmese native and executive director of the Free Burma Coalition, responding

to Weld's bill signing. "Federal legislation is currently being debated, and Governor Weld's action at the state level sets an excellent example for other states and the Congress."

Since seizing control in 1988, the military regime of Burma has held the country in an authoritarian stranglehold. Abuses have included: arbitrary arrest and detention, forced labor, torture, and murder. In 1989, the regime arrested Nobel Peace prize winner Aung San Suu Kyi, an outspoken leader of the pro democracy movement and advocate of an economic boycott against Burma. In addition, the military party voided the 1990 elections, after gaining only 2.1 percent of the legislative seats, and arrested hundreds of the democratically-elected officials.

Massachusetts is the first state to enact a selective purchase law against Burma, but several cities have taken similar action, including: Berkeley, CA; Santa Monica, CA; San Francisco, CA; Oakland, CA; Madison, WI; and Ann Arbor, M I.

"This bill gives hope to the people in Burma who are currently being oppressed and silenced," added Zarni.

Commonwealth of Massachusetts Procurement Policies and Procedures Handbook, pg. 98

Reviewing Bidders For Burma Connections - The Burma Statute -Application Of The Restricted Purchase List To Procurements

In passing the Burma Statute in 1996 (Massachusetts General Law Chapter 22 Sections 22G-M), the Commonwealth, through its Legislative and Executive Branches, expressed its clear preference against doing business with those entities that do business in Burma (also named Myanmar). This is due to the violations of human rights by the government of Burma.

To accomplish this as it applies to our procurement activities, OSD has established and maintains a restricted purchase list as required by the Statute listing those entities which are doing business in Burma. This list is available on the OSD Homepage at http://wwwmagnet.state.ma.us/osd. This list is updated quarterly by OSD.

In all procurements, the Procuring Department should check the list to determine which Bidders are on the list. The Responses (bids) of those Bidders that are on the list are then modified by adding a premium of 10% to their Response and the resulting modified Response is used as the basis for comparing Responses. Only if the Response with the 10% premium added still provides Best Value in comparison to other non-listed entities will it be considered for the contract award.

However, if the entity which is listed as doing business in Burma does get the contract award, the prices originally bid shall form the basis of the contract, not the premium-added Response. If any Bidder insists that it should not be on the restricted purchase list, they should be referred to OSD Legal staff for appropriate action.

NFTC Council Highlights
(August 9, 1996)

NFTC OPPOSES BURMA LEGISLATION PASSED BY SENATE -- Before recessing on August 2, the Senate amended the Foreign Operations Appropriations bill requiring the President to prohibit new U.S. company investment in Burma if the government re-arrests or harms opposition leader Daw Aung San Suu Kyi or commits large-scale repression or violence against the democratic opposition. This amendment, sponsored by Senator Cohen (R-ME), and co-sponsored by Senators (Chaffee (R-RI) Feinstein (D-CA) and others, was successfully substituted for a much stronger sanctions measure sponsored by Senator McConnell (R-KY). The amendment requires the President also to try to develop a multilateral policy in coordination with members of ASEAN and other countries trading and investing in Burma, but it does not make the new investment ban contingent on multilaterl agreement. It was therefore opposed by the NFTC even though it was preferable to the McConnell amendment. The bill now goes to a Senate-House conference, members of which were appointed by the leadership before recess anbd which will most likely meet the second week of September. The NFTC will lobby the conference to accept the House version of the Foreign Operations Approproations bill since it has no language on Burma.

FOLEY, HOAG & ELIOT LLP

November 8, 1996
Mr. Philmore Anderson, III
State Purchasing Agent
Department of Procurement & General Services
One Ashburton Place, 10th Floor
Boston, MA 02108

Dear Philmore:

Enclosed please find the original Affidavit of Paul Carmichael, Acting General Counsel of Apple Computer, Inc., on behalf of the company. As you can see, the Affidavit makes clear that Apple has suspended all business with Burma except that which is expressly necessary to service prior contracts and has made clear its intention to forego all future product sales or services to Burma so long as Chapter 130 is in effect. I trust this information is sufficient to prevent Apple's appearance on the Commonwealth's restricted purchase list. Thank you again for your procedural advice in this matter and please let me know if I can provide any additional information to you.

Best regards,

/s/ Gloria C. Larson

cc: Charles Beard, Esquire

AFFIDAVIT OF PAUL CARMICHAEL
ON BEHALF OF APPLE COMPUTER, INC.

I, PAUL CARMICHAEL, BEING DULY SWORN, DEPOSE AND SAY:

1. My name is Paul Carmichael. My business address is 20400 Stevens Creek Blvd., Cupertino, CA 95014. I am the acting general counsel of Apple Computer, Inc. ("Apple"), and submit this affidavit on Apple's behalf. All of the matters stated in this affidavit are true of my own knowledge, except any matters stated as based on information and belief, and, as to those matters, I believe them to be true.

2. This affidavit constitutes Apple's response to the letter of October 7, 1996, from Philmore Anderson, State Purchasing Agent, to Apple's Chief Executive Officer, concerning AN ACT REGULATING STATE CONTRACTS WITH COMPANIES DOING BUSINESS WITH OR IN BURMA (MYANMAR) ("the Statute").

3. Apple and its subsidiaries' primary lines of business are the manufacture and sale of computer hardware, the publishing and sale of computer software, and the furnishing of services beneficial to the purchasers of, and others who maintain, the hardware and software. Neither Apple nor anysubsidiary [sic] has a place of business in Burma, and there have not been any known transactions in which Apple or any subsidiary of Apple has itself sold products or services in Burma. Before September 10, 1996, however, Apple and certain of its subsidiaries distributed computer hardware, computer software, and certain support services into Burma through independent

distributors, which caused such products to be delivered or utilized in Burma.

4. On or about September 10, 1996, Apple and its subsidiaries suspended all trading in Burma, except what was explicitly required to meet warranty and service obligation under existing contracts, which will not be renewed as they expire. Since September 10, 1996, Apple and its subsidiaries have not sold any hardware or software for delivery in Burma, nor have they offered or implemented any new services within Burma. Further, since that date, Apple and its subsidiaries have canceled pending orders requiring delivery of products to Burma.

5. Apple and its subsidiaries have no intention to sell or ship any products into, or offer any new services within, Burma, directly or indirectly, so long as the Statute's present requirements remain in effect, except when required to meet existing contractual warranty and service obligations. Accordingly, Apple asserts that it is full compliance with the Statute and that Apple does not now meet the criteria for inclusion on the restricted list required to be established under the Statute. Executed under penalty of perjury this 7th day of November, 1996, at Cupertino, California.

/s/

Paul Carmichael

/jurat omitted/

Philips International B.V.

The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Operational Services Division
One Ashburton Place
Boston, MA 02108-1552
U.S.A.
Attn. Mr. Secretary
CLD/PP/LW

November 11, 1996

Re.: State Restricted Purchase List; your letter of October 7, 1996.

Dear Mr. Secretary,
Attached please find our answer to the above letter, requesting you to confirm that our company does not meet the criteria for being placed on your Restricted Purchase List.
Sincerely,
PHILIPS INTERNATIONAL B.V.
P.M.A.L. Plompen
Senior Director of Legal Affairs
Secretary of the Company
cc.: -Investor Responsibility Research Centre
-Philmore Anderson, State Purchasing Agent

/jurat omitted/

PHILIPS

The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Operational Services Division
One Ashburton Place
Boston, MA 02108-1552
U.S.A.
Attn: Mr. Secretary

November 11, 1996

The undersigned, P.M.A.L. Plompen, herewith declares as follows.

I have investigated whether indeed Philips Electronics Ltd. recently appointed Maymo Import Export (Myanmar) Ltd. as the Burmese distributor of Philips' business electronics, communication and security and office automation products, as mentioned in the annex to your letter of October 7, 1996 to Philips Electronics N.V.

On the basis of the information provided to me I herewith represent that Philips Electronics N.V. has never concluded a distributor agreement as mentioned above; Philips Electronics (Thailand) Ltd. did negotiate a distribution agreement as mentioned above.

As the attached Notice shows, said agreement has been canceled; formally termination will be effective on December

4, 1996 (annex 1). Philips Electronics (Thailand) Ltd. furthermore has informed us that under said agreement no business transactions have been, nor will be, concluded and/or implemented by them.

I would welcome receiving your confirmation that under the circumstances described above our company does not meet the criteria for being placed on your Restricted Purchase List.

Copy of this letter will be sent to the IRRC with the request to withdraw our company from its listing of Multinational Businesses in Burma (Myanmar).

Signed by:
P.M.A.L. Plompen

Senior Director of Legal Affairs
Secretary of the Company
Philips International B.V.
/jurat omitted/

PHILIPS

November 4, 1996

Maymyo Import Export (Myanmar) Ltd.
Wizaya Plaza, 226 U Wizara Road,
Dagon Township, Yangon, Myanmar
Attn: Mr. Maung Kyaing
Managing Director
Subject : Notice of Intent Cancellation of Distribution Agreement

Dear Sir,

Refer to the Distributor Agreement made between Philips Electronics (Thailand) Ltd. and Maymyo Import Export (Myanmar) Ltd., dated 29th May 1996.

By virtue of Article 10.1 Termination (b) we would like to give this notice of intent to cancel the referred Agreement to be effective by 30 days after your receipt of this notice.

We would appreciate if you could indicate your concurrence with the requested cancellation by counter signing the enclosed duplicate of this letter and returning it to the undersigned.

Yours sincerely,
Philips-Electronics (Thailand) Ltd.
Robert Martjnse
Chairman & Managing Director

Read and Agreed

Maymo Import Export (Myanmar) Ltd.
/s/

HEWLETT PACKARD

November 19, 1996
Mr. Philmore Anderson
State Purchasing Agent
The Commonwealth of Massachusetts
Executive Office for Administration and Finance
Operational Services Division
One Ashburton Place
Boston, MA 02108-1552

Re: Doing Business in Burma (Myanmar) -your letter dated October 7, 1996

Dear Mr. Anderson:

Regarding your above referenced letter which has been forwarded to me for response, Hewlett-Packard Company (HP) does not concur with your decision to place HP on the list of companies doing business with or in Burma (Myanmar). HP does not believe that our company or its activities meet any of the criteria under the "Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar)."

The information which was reported in the Investor Responsibility Research Center's (IRRC's) August 1996 listing of multinational[sic] Business in Burma (Myanmar) is based on an article in a Myanmar newspaper announcing Myanmar Computer Systems as a distributor of HP products in Myanmar. Myanmar Computer Systems is a Singapore owned and registered company. While HP does have an agreement with this company, this relationship does not meet the definition

under Section 22G(b) of the Act which prohibits "distribution agreements...in Burma (Myanmar)" as neither the agreement nor the Company is in Burma (Myanmar). All of HP's business activities with MCS, including HP delivery of its products, occurs in Singapore as well.

To insure that there is no confusion over whether any of HP's activities could constitute doing business in Burma (Myanmar) under the Act, HP is in the process of terminating its agreement with Myanmar Computer Systems. (The termination should be effective in the next couple of weeks.) However, this does not guarantee that HP products will not be distributed or sold in Burma (Myanmar) as HP cannot prevent the sale of our products from independent companies with which HP does not have a contractual relationship and which do not receive the products from HP directly.

Based upon the above and the enclosed affidavits, HP respectfully requests that HP's name not be placed on the Commonwealth's list of companies doing business with or in Burma (Myanmar).
Please call me at (508) 659-2077, if you have any questions.

Very truly yours,
HEWLETT-PACKARD COMPANY
Robert J. Chwaliszewski
Regional Counsel

District of Columbia, ss.

Affidavit of James F. Whittaker

James F. Whittaker, of full age, being duly sworn, upon his oath deposes and says:

1. I am employed at Hewlett-Packard Company as International Public Policy Manager, Corporate Government Affairs, and have held this position for approximately 7 years, my total length of service with Hewlett-Packard.

2. One of the responsibilities of my current position is involvement with state and local legislation affecting HP's international trade. In particular, I have been involved with reviewing Hewlett-Packard's compliance with the Massachusetts' statute entitled "An Act Regulating State Contracts Doing Business With or In Burma (Myanmar)".

3. As part of my involvement with Hewlett-Packard's compliance with the Act, I have been in contact with Kean-Huat Cheah, General Manager for Hewlett- Packard Singapore and Dick Warmington, Managing Director, Asia-Pacific, for Hewlett-Packard, both of whom are knowledgeable about Hewlett-Packard's business activities in the Far East, including Singapore and Burma (Myanmar). These individuals told me that Hewlett-Packard has no direct sales activities in Burma (Myanmar). They also informed me that Hewlett-Packard Singapore has a distribution agreement with Myanmar Computer Services (MCS). They further advised me that MCS is a Singaporian owned and registered

joint venture company and that any HP business activity relating to the sale of HP products, including delivery, to Myanmar took place in Singapore.

4. I have also had communications with Lee Ting, Vice President and Managing Director of Geographic Operations for Hewlett-Packard regarding the Act and Hewlett-Packard's business activities relating to Burma (Myanmar). Mr. Ting informed me that in reaction to the Massachusetts' Act Hewlett-Packard Singapore would terminate the agreement with Myanmar Computer Services. Based on my communications with Mr. Kean-Huat, it is my understanding that Myanmar Computer Services has been notified of the termination, and that it will be effective in the next few weeks. Signed to the best of my knowledge, information and belief under the pains and penalties of
perjury. /s/ James Whittaker
/jurat omitted/

Commonwealth of Massachusetts ss:
Affidavit of Robert Chwaliszewski
County of Essex

Robert Chwaliszewski, of full age, being duly sworn, upon his oath deposes and says:

1. I am employed at Hewlett-Packard Company in Andover, Massachusetts, as an in-house attorney and have held this position for over seven years.

2. On or about October 25, 1996, I called the Investor Responsibility Research Center (IRRC) in Washington, DC in order to determine the information the IRRC reported to the Commonwealth of Massachusetts concerning Hewlett-Packard's business activities in Burma (Myanmar).

3. I spoke with two individuals at the IRRC who informed me that the only information the IRRC had on Hewlett-Packard's activity in Burma (Myanmar) was an article from a Myanmar newspaper. This article announced that Myanmar Computer systems was a distributor of Hewlett-Packard products in Burma (Myanmar).

Signed to the best of my knowledge, information, and belief under the pains and penalties of perjury.

/s/ Robert J. Chwaliszewski /jurat omitted/

EUROPEAN UNION
DELEGATION OF THE EUROPEAN COMMISSION

January 23, 1997

The Honorable William F. Weld
Governor of Massachusetts
State House, 360
Boston, Massachusetts 02133
FAX: (617)727 9725

Dear Governor Weld,

Permit me to send you the attached note verbale which we presented to the US Department of State today with reference to the Massachusetts law enacted in June 1996 - An Act Regulating State Contracts With Companies Doing Business With Or In Burma. The US Government will already have alerted you about this matter.

As you can see from the note, the European Community objects to this legislation as we view it as a breach of the rules for procurement, which includes in its coverage, on the US side, the state of Massachusetts.

I would like to take this opportunity to emphasise that our objections to this Act pertain solely to what we perceive as a breach of US international obligations. With regard to Burma, let me assure you that the European Union shares US concerns

about the absence of democratisation and continuing human rights violations in Burma. To illustrate this, I also enclose a "Common Position" on Burma, adopted by the Council of the European Union and in effect since October 29, 1996, which outlines measures we have taken vis-a-vis Burma.

We urge you to analyse the effect of this type of legislation, as it presents, in our view, a breach of US international obligations and as such could have a damaging effect on bilateral EU-US relations. We also urge you to take this into consideration as we understand that similar legislation on Indonesia will be reintroduced in the Massachusetts legislature.

Sincerely,

/s/
Hugo Paemen
Ambassador

EUROPEAN UNION
DELEGATION OF THE EUROPEAN COMMISSION

The European Commission presents its compliments to the Department of State with reference to the *Act Regulating State Contracts with companies doing business with or in Burma (Myanmar)* enacted on 25 June 1996 by the Commonwealth of Massachusetts. [1996 Mass. ALS 130, 1996 Mass. Adv. Legis. Serv. 130; 1996 Mass. H.B. 2833].

This legislation forbids Massachusetts' state agencies, state authorities, the House of Representatives or the State Senate to sign new contracts or renewals of existing contracts with companies doing business with or in Burma.

The European Community is of the opinion that the above mentioned legislation is a breach of the rules for procurement procedures as stipulated in the Agreement on Government Procurement (GPA). Firstly, it violates Article VIII(b) of the GPA, given that it imposes conditions on a tendering company which are not essential to ensure the firms capability to fulfill the contract. Secondly, it infringes Article X(3) of the GPA, because it imposes qualification criteria based on political, rather than economic considerations. Thirdly, it is in contradiction to Article XIII (4) of the GPA to the extent that the statute allows the award of contracts to be based on political instead of economic considerations.

When concluding the GPA, the US accepted to cover the state of Massachusetts under its offer of sub-federal agencies in order to balance the EC's offer to the US. By limiting access of

European suppliers to the procurement of Massachusetts' state agencies, state authorities, the House of Representatives or the State Senate, the USA is reducing its GPA offer.

Furthermore, it appears that several other sub-federal authorities have adopted or are adopting legislation or ordinances with a similar effect. The state of Massachusetts is also considering similar measures with regard to another country besides Burma. We underline that these types of sub-federal actions reduce the US offer under the GPA or affect the way special or exclusive rights are attributed.

The European Community requests the US government to transmit its concern to the State of Massachusetts. The European Community also wishes to know what action, if any, the US Government intends to take in response to the Massachusetts measure. Furthermore, the European Community fully reserves its rights under the WTO dispute settlement procedure.

The European Community avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

Washington, DC

January 22, 1997

Department of State
Washington, DC 20520

EUROPEAN UNION
Brussels, 25 October, 1996
THE COUNCIL
COMMON POSITION

defined by the Council on the basis of Article J.2
of the Treaty on European Union, on Burma/Myanmar

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article J.2 thereof,

HAS DEFINED THE FOLLOWING COMMON POSITION;

1. The European Union, considering the recent discussions with Burma/Myanmar at meetings in Jakarta and New York, is disappointed at the unwillingness of the State Law and Order Restoration Council (SLORC) to enter into a meaningful dialogue with it. The European Union reaffirms its determination to resume such dialogue at any time.

2. The European Union is concerned at the absence of progress towards democratisation and at the continuing violation of human rights in Burma/Myanmar. It deplores, in particular, the practice of torture, summary and arbitrary executions, forced labour, abuse of women, political arrests, forced displacement of the population and restrictions on the fundamental rights of freedom of speech, movement and assembly. It condemns the detentions in May and September 1996 of members and supporters of the National League for

Democracy (NLD). It calls for the immediate and unconditional release of all detained political prisoners. The NLD and other legitimate political parties, including those from ethnic minorities, should be allowed to pursue freely their normal activities. It calls on the SLORC to enter into meaningful dialogue with pro-democracy groups with a view to bringing about national reconciliation.

3. The European Union recalls its great concern at the failure of the SLORC to respect the results of the May 1990 elections and the subsequent maintenance of the military rule. It notes that the military regime has yet to demonstrate convincingly its intention to establish civilian democratic rule, within a credible time-frame. In addition, the European Union notes the failure of the SLORC to demonstrate any willingness to respond to the concerns of the united Nations General Assembly and the European Union.

4. The European Union recalls that it has already requested the Special Working Group on arbitrary detention and imprisonment to visit Burma/Myanmar, the UN High Commissioner for human rights to take action against Burma/Myanmar, and the Special Rapporteur on Burma/Myanmar to investigate the circumstances leading up to, and surrounding, the death of Mr. James Leander Nichols.

5. With a view to promoting progress towards democratisation and securing the immediate and unconditional release of detained political prisoners, the European Union

(a) reaffirms the following measures already adopted:

(i) expulsion of all military personnel attached to the diplomatic representations of Burma/Myanmar in Member States of the European Union and withdrawal of all military personnel attached to diplomatic representations of the Member States of the European Union in Burma/Myanmar;

(ii) an embargo or arms, munitions and military equipment[1] and suspension of non humanitarian aid or development programmes. Exceptions may be made for projects and programmes in support of human rights and democracy as well as those concentrating on poverty alleviation and, in particular, the provision of basic needs for the poorest section of the population, in the context of decentralised cooperation though local civilian authorities and Non-Governmental Organisations.

(b) introduces the following, additional measures:

(i) ban on entry visas for senior members of the SLORC and their families;

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[1] The aforementioned embargo covers weapons designed to kill and their ammunition, weapon platforms, non-weapon platforms and ancillary equipment The embargo also covers spare parts, repairs, maintenance and transfer of military technology. Contracts entered into prior to the date of entry into force of the embargo are not affected by this common position.

(ii) ban on entry visas for senior members of the military or the security forces who formulate, implement or benefit from policies that impede Burma/Myanmar's transition to democracy, and their families; and

(iii) suspension of high-level bilateral governmental (Ministers and Officials at the level of political director and above) visits to Burma/Myanmar.

6. The implementation of this common position will be monitored by the Council, to which the Presidency and the Commission will regularly report, and will be reviewed in the light of developments in Burma/Myanmar. Further measures may need to be considered. In the case of a substantial improvement of the overall situation in Burma/Myanmar, not only the suspension of the aforementioned measures, but also the gradual resumption of cooperation with Burma/Myanmar will be considered, after careful assessment of developments by the Council.

7. This Common Position shall take effect on 29 October 1996 for a renewable six months period.

8. This Common Position shall be published in the Official Journal

Congress of the United States
House of Representatives
Washington, DC 20515

February 3, 1997

His Excellency
Ryutaro Hashimoto
Prime Minister of Japan
Tokoyo, Japan

Dear Prime Minister Hashimoto,

As members of the U.S. Congress from the State of Massachusetts, we are extremely disappointed by the Japanese government's recent comments regarding the State's new law which denies state contracts to companies doing business in Myanmar -- a country that flagrantly continues to violate the most basis human rights of its citizens.

We are wholly supportive of fostering good relations between Japan and the United States, and we believe a strong relationship is critical to the futures of both nations. However, we do not believe it is appropriate for the government of Japan to involve itself in the internal affairs of Massachusetts. If the Japanese government chooses to place dollars ahead of human rights, it has that sovereign right, but Japan should not attempt to intimidate Massachusetts into changing the standards it has established for doing business with the state government. Therefore we strongly urge the government of Japan to end its opposition to this law and drop any challenge of it is the World

Trade Organization.

We appreciate your immediate attention to this matter.

Congressman Barney Frank
Congressman Edward Markey
Congressman John Joseph Moakley
Congressman Joseph P. Kennedy, II
Congressman Richard Neal
Congressman John Olver
Congressman Martin Meehan
Congressman James P. McGovern
Congressman William Delahunt
Congressman John Tierney

cc: Ambassador Kunihiko Saito

BRADLEES
February 11, 1997
Mr. Philmore Anderson
State Purchasing Agent
Executive Office for Administration and Finance
Operational Services Division
One Ashburton Place
Boston, MA 02108-1552

Re: Burma

Dear Mr. Anderson:

We are in receipt of your letter dated January 31, 1997 regarding the restricted purchase list established in response to the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar). Bradlees does not believe that it meets the criteria for being placed on the list. Therefore, enclosed pleased find an Affidavit setting forth Bradlees' position. We trust that this Affidavit is sufficient so that Bradlees will not be placed on the list.

If you require additional information or have any questions, please feel free to contact me.

Very truly yours,

Sharon Cohen Gold

/s/

AFFIDAVIT OF CAROL REED

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF NORFOLK

I, Carol Reed, hereby depose and state as follows:

1. I am a resident of the Commonwealth of Massachusetts, am over the age of eighteen and make this affidavit based on my own personal knowledge.

2. I am the Vice President of Product Development for Bradlees, Inc. and Bradlees Stores, Inc. ("Stores"). I am familiar with the day-to-day operations and policies of Stores with respect to the development and importation of goods from overseas. Stores is the operating company which develops and imports goods from overseas for the Bradlees Department Stores.

3. As of January 1, 1997, the policy of Stores prohibits any shipments from or placement of goods in Burma. As of January 1, 1997, Stores will not be importing any goods from Burma.

4. Therefore, it is the position of Bradlees, Inc. and Stores that neither company meets the criteria for being placed on the restricted purchase list established pursuant to Chapter 130 of the Massachusetts Acts of 1996, titled AN ACT REGULATING STATE CONTRACTS WITH COMPANIES DOING BUSINESS WITH OR IN BURMA (MYANMAR).

5. The Investor Responsibility Research Center has already been advised of the above policy regarding banning any importation of goods from Burma.

/s / jurat omitted/

USA*ENGAGE LETTERHEAD

April 23, 1997

The Honorable Patrick J. Kennedy
1505 Longworth House Office
Washington, D.C. 20515

Dear Congressman Kennedy:

I am writing on behalf of USA*ENGAGE, a coalition of over 450 U.S. companies, farmers and associations who are concerned about the use by the U.S. government of unilateral sanctions against other countries.

We share your concerns over the internal situation in East Timor, which is a complex problem that defied simple solutions.

Our coalition has come together out of a concern that America no longer enjoys any real influence when it practices go-it-alone diplomacy. The record of unilateral sanctions having an impact on the behavior of other governments shows no success in a world in which there are so many choices of suppliers of goods, services and military equipment and know-how. A unilateral sanction on the government of Indonesia is highly unlikely to make the Suharto government change its policies; a contrary response is more likely.

We appreciate your reaching out to the business community. We share the objectives you are seeking. We encourage you to do so in terms of ***engagement***, not of isolation. The principles that we stand for are attached. We would urge you to use them for guidance as you formulate your

options. We hope you will also engage the State Department, the Department of Defense, the Government of Portugal, the Japanese investors in East Timor and others who have an obvious stake in the issue, before settling on any particular course.

You have an opportunity to demonstrate new thinking more suited to the realities of the post-Cold War era. We look forward to a continued dialogue.

Yours sincerely,
/s/

Frank D. Kitteredge

WORLD TRADE ORGANIZATION

WT/DS88/1
GPA/D2/1
26 June 1997
(97-2641)

Original: English

UNITED STATES - MEASURE AFFECTING GOVERNMENT PROCUREMENT

Request for Consultations by the European Communities

The following communication, dated 20 June 1997, from the Permanent Delegation of the European Commission to the Permanent Mission of the United States and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the United States pursuant to Article XXII of the Government Procurement Agreement (GPA) and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes regarding the Act Regulating State Contracts with Companies doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (Chapter 130 of the Acts of 1996). This Act provides, in essence, that public authorities of the Commonwealth of Massachusetts are not allowed to procure goods or services from any persons, whether US or foreign, who do business with Burma (Myanmar).

The European Communities consider that, as Massachusetts is covered under the US offer to this Agreement, the measure described above violates the obligations of the US under the GPA: though not necessarily exclusively, the following provisions of the GPA: Article VIII(b), given that it imposes conditions on a tendering company which are not essential to ensure the firms capability to fulfill the contract; Article X as it imposes qualifications criteria based on political rather than economic considerations, and Article XIII to the extent that the statute allows the sward of contracts to be based on political instead of economic considerations.

This measure also appears to nullify or impair the benefits accruing to the European Communities under this Agreement, particularly as it limits the access of BC suppliers to procurement by a sub-federal authority covered by the Government Procurement Agreement in such a way so as to result in a de facto reduction of the US sub-federal offer under the GPA.

The European Communities additionally consider that this measure has the effect of impeding the attainment of the objectives of the GPA, including that of maintaining a balance of rights and obligations.

The European Communities are also very concerned by the recent proliferation of similar initiatives taken or proposed by Massachusetts and other sub-federal authorities.

This request for consultations is without prejudice to the potential pursuit of actions under the General Agreement for

Trade in Services.

I look forward to receiving your reply to this request and to fixing a mutually acceptable date for consultations.

WORLD TRADE ORGANIZATION

WT/DS95/1
GPA/D3/1
21 July 1997
(97-3107)

Original: English

UNITED STATES - MEASURE AFFECTING GOVERNMENT PROCUREMENT

Request for Consultations by Japan

The following communication, dated 18 July 1997, from the Permanent Mission of Japan to the Permanent Mission of the United States and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

I hereby extend a request on behalf of the Government of Japan for consultations with the United States pursuant to Article XXII of the Agreement on Government Procurement (hereinafter the "GPA") and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes regarding the Act regulating State Contracts with Companies doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (hereinafter the "Act"). This Act effectively prohibits the public authorities of Massachusetts, including all the executive offices covered by the GPA, from procuring goods or services from any person

contained in the restricted purchase list solely because the said person does business with or is in Myanmar.

The Government of Japan considers that the measure is inconsistent with the obligations of the United States under the WTO Agreement, including, in particular, the GPA. The provisions of the GPA with which the measure appears to be inconsistent include, but are not limited to, the following Articles: paragraph 2 of Article III, paragraph (b) of Article VIII, Article X and paragraph 4 of Article XIII.

With regard to this request, I regret to point out that the United States has given no indication of a reply to the request dated 17 March 1997 from my authorities for information pursuant to paragraphs 1 and 3 of Article XIX of the GPA. The Government of Japan has also been very concerned about the recent legislative initiatives similar to the Act, which have been taken or proposed by the sub-federal authorities in the United States.

I look forward to receiving your reply to this request and hope that you can understand the intention of my authorities to hold the consultations at the same time as the European Communities, which are already scheduled with the United States for 22 July 1997.

VENABLE
Attorneys At Law

September 23, 1997

BY FACSIMILE (617) 727-4527
AND BY FEDERAL EXPRESS
Harold Fisher, Esq.
Counsel, Operational Services Division
1 Ashburton Place, Room 1017
Boston, MA 02108

Dear Mr. Fisher:

This letter is with additional reference to my communications on behalf of Compaq Computer Corporation ("Compaq or the Company"), regarding the removal of its name from the Restricted Purchase List ("the List") maintained with respect to the Massachusetts statute ("the Statute") regulating state contracts with companies doing business in Burma.

I have enclosed a facsimile copy of an affidavit executed by Mr. Paul Chan, Vice President and General Manager, Asia and Pacific Division of Compaq which sets forth the steps that the Company has taken to completely disengage from its prior market in Burma. (I will forward the original signed copy of the affidavit to you as soon as it reaches me from Singapore.)

The contents of the affidavit shows that Compaq has no

business subsidiaries, no resellers and no sales efforts of any kind in Burma. Its prior reseller agreements with respect to Burma have expired, and it no longer otherwise sells products to end-users in Burma.

Compaq has no plans to resume its activities in Burma. We believe that Compaq's name should be removed from the List based on its disengagement from the Burmese market.

VENABLE

Harold Fisher, Esq.
September 23, 1997
Page 2

Thank you for your continuing courtesy in this matter. Please call me if you have any questions.

Very truly yours,

/s/

Thomas J. Cooper

Affidavit of PAUL CHAN

I, PAUL CHAN, declare as follows:

1. I am Vice President and General Manager, Asia and Pacific Division of the Compaq Computer Corporation ("Compaq" or the "Company"). I am providing this affidavit in support of the Division's request to have its name removed from the Restricted Purchase List, maintained with respect to the Massachusetts statute regulating state contracts with companies doing business in Burma (Myanmar).

I hereby affirm that I am authorized by the Company to make declarations and affidavits of this type.

2. Compaq was founded in 1982. The Company designs, develops, manufactures, and markets a wide range of computing products, including desktop computers, portable computers, workstations, communications products, tower PC servers, and peripheral products that store and manage data in network environments. Compaq products are sold and supported in more than 100 countries around the world.

3. Compaq generally distributes its products through third-party computer resellers, value-added resellers, dealers, and systems integrators.

4. Compaq provides support and warranty repairs to its customers through full- service computer dealers and independent third-party service companies. Compaq offers its customers a number of services and support programs, such as one to three-year limited warranties on PC products.

5. The Company began selling PC's in Burma in 1994 from its wholly-owned subsidiary in Singapore. Sales were initially made to a Singapore-based reseller, which in turn appointed a small number of dealer associates to sell products to end-user customers in Burma. This reseller subsequently transferred to a Burmese Company.

6. In 1996, Compaq directly appointed four additional resellers owned or operated by Burmese nationals to sell Compaq products in Burma.

7. Compaq allowed its contracts with all of its resellers to expire on January 31, 1997. None has been renewed.

8. Compaq continued to sell products to its resellers for resale in Burma through the first quarter of 1997, that is, through approximately March 19, 1997. These resellers were notified in March and June, 1997 that Compaq would no longer sell products in Burma.

9. The Company has never appointed or authorized any service providers in Burma. Warranty and replacement parts exchanges have been undertaken by the Company's authorized resellers in Burma. Although Compaq no longer sells its products in Burma, in order to maintain end-user satisfaction and to fulfill its warranty obligations, it anticipates the need to send replacement parts to Burma for a limited time as well as maintenance, safety, and technical service guides (the "Guides"). Based on the relatively small installed base in Burma, Compaq expects the volume of replacement parts that will actually be exchanged or sold to be quite low. In any event, Compaq will not

actively market such parts or the Guides in Burma. Rather, it intends to accept orders for such parts and Guides that may be made from time to time by prior purchasers of its products.

10. Compaq's warranty obligations with respect to end-users in Burma arose both from its prior agreements with the Burmese resellers and the limited warranty statement included in the boxes that contain products sold to end-users. Compaq's standard reseller contract contains a provision stating that its products carry the warranty set forth in the limited warranty statement that accompanies each Compaq product and the warranty statement commits Compaq contractually vis-a-vis the end-user customers. As noted above, Compaq allowed its contracts with its resellers in Burma to expire on January 31 of this year. However, the warranty obligations remain in effect because they are continuing obligations under those contracts with respect to the resellers, and the warranties remain effective with respect to the end-user customers.

11. Compaq will receive no revenue for any replacement parts supplied to systems previously exported to Burma. It will pay a small labor fee to the resellers for installing the parts.

12. The anticipated updates to the Guides will be provided to the former resellers without charge. End-users will receive updates only if safety issues are present.

13. Currently, Compaq has no business presents or activities of any kind in Burma. It has no subsidiaries, no resellers and no sales efforts of any kind. As noted, Compaq's reseller agreements have expired, and it no longer otherwise sells

products to end-users in Burma. Finally, the Company's residual supply of parts and Guides to end-users in Burma will be entirely passive and depend on requests from prior purchasers of products in that country.

I swear under penalty of perjury that the foregoing is true and complete to the best of my knowledge and belief.

/s/ PAUL CHAN

September 23, 1997

Notes for remarks by Byron Rushing at the Burma Seminar, Stockholm, Sweden;
Thursday, September 25, 1997

1. I first became interested in Burma in February, 1993 when I read a statement signed by Bishop Desmond Tutu and other Nobel laureates urging support for Aung San Suu Kyi. (Suu Kyi was awarded the Nobel Peace Prize in 1991.) At that time she had been nearly four years in detention.

2. SLORC has managed to survive through revenues generated by foreign investments and by a market for export of the nation's natural resources. Burton Levin, the former U.S. Ambassador to Burma, says that "foreign investment in most countries acts as a catalyst to promote change, but the Burmese regime is so single minded that whatever they might obtain from foreign sources they pour straight into the army while the rest of the country is collapsing."

3. The Commonwealth of Massachusetts has a long history of assisting fledgling, democratic movements and opposing oppressive regimes throughout the world. From our leadership in the anti-apartheid campaigns we know that local governments can act effectively as parts of grassroots foreign policy initiatives.

4. In 1994, when activists sought my support and leadership in the legislature, I had available strategies

which we had used in campaigns around South Africa and Northern Ireland. I suggested "selective purchase", a modified boycott by a local government of goods and services sold by companies doing business in Burma.

5. Considering the deterioration of human living conditions in Burma, where military generals have stolen an entire country's resources and is stealing--enslaving--its population through force--we successfully argued in the legislature--the Commonwealth of Massachusetts should not provide contracts to companies that do business with this dictatorship government. The Commonwealth joined the movement for the restoration of democracy in Burma.

6. I would like to bring you up to date on what has transpired since the enactment of the Massachusetts Burma law, Chapter 130 of the Acts of 1996. As you may recall, the bill, except for a few exceptions, bars the Commonwealth from buying goods or services from companies that do business in Burma. By so doing, we have joined an international movement for the restoration of democracy in that country, in the same way we were early supporters of the successful movement to end apartheid in South Africa.

7. The bill is having an impact. In a recent interview, Nobel Peace Prize laureate Aung San Suu Kyi, the leader of the National League for Democracy (whose party won more than 80% of the seats in the 1990 Burmese elections, but has been unable to assume its

responsibilities) singled out the Massachusetts Burma law for praise. Since the passage of our law, over 13 companies have withdrawn from Burma. We have no accurate count of how many have put off plans to enter Burma.

8. Recently, both the European Commission of the European Union and the Japanese governments have expressed their opposition to the Massachusetts Burma law. On January 22, the European Commission formally protested the Massachusetts Burma law, alleging that it violates the World Trade Organization (WTO) "Agreement on Government Procurement." Angered by this intrusion into Massachusetts State law, all ten Massachusetts Congressmen sent letters of protest to the President of the European Commission and the Japanese Prime Minister of Japan.

9. Similar Burma legislation has been adopted by ten cities and one county, and has been introduced or is now pending in five other states: California, Connecticut, North Carolina, Texas and Vermont. Selective purchasing initiatives are underway this spring in New York City and Quincy, with more cities to follow.

10. Although at this time I am not aware of any domestic efforts to have the Massachusetts Burma bill repealed, it is important for my colleagues to vigorously refute such arguments should they arise. We have encountered

such resistance before when we took actions concerning South Africa and Northern Ireland and China and have always stood our ground. This legislature must be free to demand that the highest democratic, environmental and labor standards be adhered to by the state's vendors and contractors.

11. On April 22, President Clinton announced that the Administration would ban new US investment in Burma. It is clear that President Clinton took this action for three main reasons. The most important factor in this decision was the call for sanctions by Aung San Suu Kyi and the democracy movement inside Burma. Their principled call for sanctions, despite the SLORC's brutal crackdown, laid the more foundation for President Clinton's decision.

12. Secondly, the Administration took this action in response to pressure for sanctions from Congress led by senators Mitch McConnell and Daniel Patrick Moynihan.

13. Thirdly, grassroots pressure, particularly in the form of state and local selective purchasing laws, built the political momentum for President's Clinton's decision. We in Massachusetts can be proud that we were the first state to adopt a Burma selective purchase law.

14. The Massachusetts law puts pressure on many companies in Burma which are not affected by the President's sanctions. Companies that are already

investing in Burma and foreign owned companies in Burma--if they wish to do business with the Massachusetts government and its authorities--are covered by our Burma selective purchase law.

15. There remains a need for additional selective purchase bills to be introduced and passed throughout our country. This is just one important battle won in the course of a long strategy; let us enjoy our deserved victory today and return to the advocacy tomorrow.

16. The EC is, by challenging the Massachusetts Burma law, taking political pressure off the SLORC and undercutting Aung San Suu Kyi's support for selective purchasing laws.

17. The European Free Burma groups led by Gijs Hillenius of the Burma Center Netherlands, have launched a campaign to press European governments to join the US and ban new investment in Burma. They have also worked with legislators in the European and national parliaments to make statements opposing the EC's stand against the Massachusetts Burma law.

18. The EU and Japan are engaged in actions that are "fundamentally inconsistent" with their own positions regarding Burma sanctions. Japan has called for dialogue between the military junta and the democracy movement. European support for Burma sanctions is particularly strong. Just one month ago, the European parliament passed a unanimous resolution calling on the

European Union to enact economic sanctions on Burma. In addition, the European Parliament's resolution specifically urged the European Commission not to take action against the Massachusetts Burma law under the WTO dispute settlement procedures.

19. The EU and Japan contrived WTO dispute raises critical issues regarding the jurisdiction of the World Trade Organization, state sovereignty and popular support for democracy movements overseas. Consequently, we must urge the USTR to maintain a firm stand while keeping the public fully informed of all negotiations and decisions made during the consultations and dispute resolution process.

20. The Clinton Administration has recognized the illegitimacy of the Burmese military dictatorship. In its 1997 Report on Human Rights, the U.S. Department of State reported that in 1996, "the military regime in Burma stepped up its 'rolling repression' and systematic violation of human rights," citing the killing and torture of dissidents and ethnic minorities. On April 21, 1997, President Clinton fulfilled the mandate of the Cohen-Feinstein law by imposing sanctions on Burma and restricting new U.S. corporate investment in that country. U.S. Secretary of State Madeline Albright told the leaders of ASEAN meeting in Kuala Lampur, Malaysia on July 27, 1997, "Drug money has become so pervasive in Burma that it taints legitimate investment and threatens the region as a whole." I commend the Administration for taking this

stand and believe the international community must strengthen its resolve in dealing with the Burmese dictatorship, including the forcible removal of all multinational corporations doing business there.

21. The European Union and Japanese government complaints about the Massachusetts law are without merit. The state law treats foreign-based corporations the same as it treats U.S.- based corporations. In fact, unlike the federal law, which affects only U.S. -based corporations, state and local purchasing laws are the only way to effectively pressure U.S. and foreign-based corporations equally.

22. The citizens of Massachusetts, a well as every other state, have every right to decide criteria fitting with their principles on where and how they choose to spend their tax dollars. Such decisions are part and parcel of our democratic, federal form of government. In no way can we accept interference by foreign governments or the World Trade Organization in our elected governments' ability to make these decisions. Failure to uphold the right of state and local governments to make their own purchasing decisions in this instance would harm not only the growing campaign to pressure the Burmese dictatorship but our rights as a free and democratic people.

23. In apartheid South Africa international economic pressure was effective in bringing democracy to all its citizens. As Bishop Tutu says, "International

pressure can change the situation in Burma. Tough sanctions, not constructive engagement, finally brought the release of Nelson Mandela and the dawn of a new era in my country. This is the language that must be spoken with tyrants--for, sadly, it is the only language they understand The courageous, committed witness of Bu a's democratically elected leader, Aung San Suu Kyi ... is an inspiration. We must ensure that because she out of sight, she is not therefore out of mind."

24. These first steps taken in Massachusetts, in New York City and in other municipalities begin to assure all the people of Burma that although they are out of sight of the United States, Burma is not therefore out of mind of all of us who believe in democracy.

--Byron Rushing has been a member of the Massachusetts House of Representatives since 1983. The Burma Seminar was arranged by Diakonia, The Swedish NGO Foundation for Human Rights and the Olof Palme International Center.

Testimony
October 23, 1997
House of Representatives
Ways and Means
Trade

Use and Effect of Unilateral Trade Sanctions

TESTIMONY FOR
UNDER SECRETARY EIZENSTAT
BEFORE THE
TRADE SUBCOMMITTEE
HOUSE WAYS AND MEANS
OCTOBER 23, 1997

Mr. Chairman and Members of the Committee, thank you for this opportunity to testify before you on the use and effect of unilateral trade sanctions.

Mr. Chairman, the view that I would like to lay before you today is that the record is clear. Properly designed, implemented, and applied as part of a coherent strategy, sanctions, including economic sanctions, can be and are a valuable tool for enforcing international norms and protecting our national interests. In this age of increasing globalization we have turned more frequently to sanctions to deal with inappropriate or unacceptable behavior by states. We should improve our ability to use them effectively. They should be used only when carefully considered by both the Executive and Legislative branches as to their likely effectiveness, after all

benefits, costs, and consequences are analyzed, and after the full range of diplomatic and political options has been attempted to change the conduct in question by the target country or group.

Sanctions, especially multilateral sanctions, have been effective. Iraq, Libya, former Yugoslavia, Haiti and others provide examples. But at the same time, a realistic appraisal of our experience has taught that sanctions are not a panacea and they are not cost-free. Our object must be to learn from our growing experience, to draw the appropriate lessons so that we can find the best, the most effective way to employ this potentially powerful tool while minimizing the adverse costs.

Some things are clear. We should resort to sanctions only after other appropriate diplomatic options have been aggressively pursued and have failed, or would be inadequate. Sanctions are much more likely to be effective when they have multilateral support and participation. Multilateral sanctions maximize international pressure on the offending state while minimizing damage to U.S. competitiveness and more equitably distributing the sanctions burden across the international community. There are times, however, when the stakes are high, when important national interests or core values are at issue, that we must also be prepared to act unilaterally. Before imposing unilateral sanctions, serious thought must be given to all the potential ramifications.

In many instances, engagement can be preferable to isolation although the choice is not always so stark. In some cases, a mixed policy approach that incorporates both carrots and sticks may be appropriate. Engagement, including engagement by the US business community, may contribute a positive influence. In the case of some rogue regimes, however, engagement would simply feed the regime's appetite for inappropriate or dangerous behavior. Most importantly, there can be no "one-size fits all" approach. The President must have the flexibility to tailor our response to specific situations.

* * *

Mr. Chairman, the general concept of sanctions is not new; the idea is as old as society itself. In their work "Economic Sanctions Revisited" authors Hufbauer, Schott and Elliott cite the imposition of a trade embargo by the Athenian leader Pericles on neighboring Megara in approximately 432 BC in retaliation for Megara's attempted expropriation of territory and the kidnapping of three women. In 1812 the United States imposed an embargo on Great Britain in retaliation for British attempts to limit US trade with France. In 1917 President Wilson imposed an embargo on the sale of iron, steel and other war essentials to Japan. President Roosevelt also imposed economic sanctions on Japan in 1940. I was personally involved in the use of sanctions against the former Soviet Union following its invasion of Afghanistan during my service in the Carter White House. So the use of sanctions in pursuit of foreign policy objectives is not new.

We, however, are living in an age of heightened political and economic global integration and growing interdependence in which most countries derive their prosperity, and even

power, from growing engagement in the international economy. In such a world, sanctions are an important and potentially effective, if problematic, tool for enforcing international norms and standards of behavior, mediating not only between differing countries, but in the relationship between individual states and their own citizens as well. Sanctions are also a tool, however, which bring with themselves real costs as well as potential benefits.

The frequency with which we turn to sanctions has increased dramatically, particularly since 1990. The U.S. has applied sanctions for foreign policy purposes a total of 115 times since World War I, 104 times since World War II, and according to the count of the President's Export Council, 61 times since. 1993. Thus more than half the sanctions imposed in the past 80 years have been imposed in only the past four years. These figures do not include the increasing use of sanctions at the state and local levels.

In the UN, the Security Council imposed sanctions only twice between 1945 and 1990: Rhodesia and South Africa. Since 1990, however, the UN has imposed mandatory sanctions on 8 countries: Iraq for its invasion of Kuwait; Serbia for its use of force in former Yugoslavia; Libya in reaction to the PanAm 103 massacre; Somalia and Liberia in their civil strife; Rwanda for genocide; Haiti for abrogation of democracy; and Angola during a renewed insurrection. Just within the past few weeks the UN has threatened further tightening of existing sanctions in UNITA, and imposed sanctions on the revolutionary junta in Sierra Leone.

Others have also resorted to sanctions. The EU, Japan and Canada have joined us in imposing sanctions on Burma. The EU is withholding aid from Kenya until that country deals with problems of corruption and rigged elections. The IMF has also moved to condition its lending to Kenya on serious efforts to deal with problems of pervasive corruption. The East African states imposed sanctions on Burundi, the Economic Community of West African States (ECOWAS) on Sierra Leone, and the Association of South-East Asian Nations (ASEAN) on Cambodia.

Sanctions are used for a variety of purposes:

- to punish a country for unacceptable behavior;
- to influence the behavior of a target country;
- to signal disapproval of a government's behavior;
- as a necessary early reaction and as a warning that harsher measures--even military--could follow;
- to limit a target state's freedom of action; to deny resources or technology;
- to increase the cost of engaging in unacceptable behavior; to draw international attention to unacceptable behavior;
- to challenge our allies to take more forceful action themselves in support of common objectives;
- or at times, simply to signal that a business-as-usual approach to a government that violates core values is not acceptable.

We also use sanctions in pursuit of a large number of policy objectives. These include such things as support for human rights, including workers and religious rights, promotion of

democracy, to combat terrorism or the scourge of narcotics, in support of weapons of mass destruction and conventional non- proliferation or protection of the environment.

We have available a broad array of policy measures. These include not only punitive or coercive economic measures but political and military steps as well. These may range from simple measures such as a change in the level and size of diplomatic missions to the ultimate sanction, application of military force, with many possible stops in between. The Secretary's Advisory Committee on International Economic Policy has developed an "Illustrative Matrix of Foreign Policy Tools" including possible diplomatic, political, cultural, economic and military measures ranging from friendly persuasion, including positive inducements, to hostile or coercive steps. This matrix offers a response ramp of measures from which one could select appropriate tools for seeking to change the behavior of states that violate international norms.

We must be frank to recognize that in today's interdependent, global economy, the ability of the US to unilaterally deny key economic benefits to a target country is limited. Nevertheless, there are some measures which are not subject to foreign substitution, such as denial of a US quota, withdrawal of port privileges or landing rights, and actions in international financial institutions, consistent with their own rules, to withhold loans and assistance.

In any event, it is not always easy for us to agree whether specific sanctions have been effective. How we judge the effectiveness of sanctions depends on the desired results--

overthrow of a government (in which case anything other than the application of military force is likely to be ineffective by itself); changes in a regime's behavioral patterns by increasing the cost of doing business (by deferring investment, deterring trade and the like where multilateral sanctions are likely to be most effective); or simply as a means of expressing moral or other outrage at what we consider unacceptable behavior.

There is no single, common standard against which to measure success or failure. The standards proposed by a firm dependent on sales to Burma (where we imposed targeted unilateral sanctions) would certainly differ from those applied by a committed human rights activist who oppose any interaction that might legitimize or strengthen the position of the authorities. The lower the expectations set for what sanctions are intended to accomplish, of course, the more likely the judgment is to be positive and, perhaps, the greater the willingness to bear the costs imposed on the country imposing sanctions.

One thing is clear: sanctions are an important potential tool but are not a panacea and they are not without costs. Sanctions do offer, however, important levers for behavior modification and will continue to do so. There is one common thread: the sanctions which are most likely to be successful are multilateral ones in which a significant number of countries with economic and political clout have agreed. These also impose fewer burdens on the US business community since the companies of a significant number of countries will be required to forswear doing business with the target country.

Multilateral sanctions on South Africa were certainly a major contributor to bringing down apartheid. In Iraq, multilateral sanctions have blocked Saddam Hussein's access to the resources needed to rebuild his war machine and, even worse, restock his arsenal of non-conventional weapons. In Libya, UN sanctions have made Qaddaffi pay a heavy price for failing to turn over for trial those indicted for the massacre of PanAm 103. In Serbia, sanctions, backed up by the very real threat of military reversals for the Bosnian Serbs, clearly brought Milosevic to the negotiating table in Dayton.

There are examples of unilateral sanctions which have been effective or which have served as an encouragement to others to take action. The sanctions the United States imposed on Burma called increased international attention to human rights abuses by the ruling regime. The Europeans, Canadians and Japanese have now also imposed sanctions or withdrawn benefits. Even in Cuba, while Castro remains in power, US sanctions have discouraged foreign investment and increased pressure on the regime to adopt reforms. In other areas such as the effort to combat the source of drugs, the use or threat of unilateral sanctions has proven to be an effective tool.

In general, however, such cases tend to be fewer in number and generally restricted to those instances where we have overwhelming economic or political leverage.

Nonetheless, it is often important to show US leadership in isolating regimes or governments whose actions violate international norms. The repressive Castro regime, the last dictatorship in the hemisphere, is such a case. The greatest

challenge is to develop common policies with our allies to deal with such regimes.

Unilateral sanctions are not only less likely to be successful than multilateral, they also impose costs, which must be honestly recognized. For one thing, the unilateral nature of many of our sanctions efforts has embroiled us in differences with key allies that detract from the desired results.

Unilateral sanctions are also now being imposed on countries by US states and localities--such as New York City and the State of California's actions against Swiss banks, or the sanctions imposed by Massachusetts on Burma. While the latter were adopted in pursuit of a noble goal, the restoration of democracy in Burma, these measures also risk shifting the focus of the debate with our European Allies away from the best way to bring pressure against the State Law and Order Restoration Council (SLORC) to a potential WTO dispute over its consistency with our international obligations. Let me be clear. We are working with Massachusetts in the WTO dispute settlement process. But we must be honest in saying that the threatened WTO case risks diverting United States' and Europe's attention from focusing where it should be--on Burma.

The actions against Swiss banks are counterproductive, failing to recognize the real progress made by Switzerland in dealing with its past conduct during WWII, and discouraging further cooperation to right the wrongs of the past.

While state and local governments should express the

democratic will of their citizens, unless sanctions measures are well conceived and coordinated, so that the United States is speaking with one voice and consistent with our international obligations, such uncoordinated responses can put the US on the political defensive and shift attention away from the problem to the issue of sanctions themselves.

Questions have been raised about the constitutionality of state sanctions, and I am not here to debate that issue. But from the perspective of the Department of State, we are concerned about the impact of state and local sanctions on the President's ability to send a clear and unified message to the rest of the world. As the world's only economic and military superpower, the United States has the obligation to project a coherent and consistent message to oppressive regimes. Ad hoc and scattered actions at various levels of government, however well-intentioned, can do more harm than good in achieving the desired objective and impede the President's and Secretary of State's conduct of foreign policy. It is the Executive Branch of the US Government which is charged with conducting the nation's foreign policy, in consultation with the US Congress, not states and municipalities. We should have only one foreign policy at a time.

We are working with Massachusetts, and with other state and local governments which have implemented or are considering the imposition of various sanctions measures, to try to ensure that they are designed so that they do not conflict with our international obligations and work to advance rather than retard progress toward meeting our foreign policy objectives.

Unilateral sanctions in particular also have real costs to US business and American workers. A number of organizations have recently released different studies of the cost and effectiveness of sanctions, including the President's Export - Council, the National Association of Manufacturers, the European-American Business Council, the United Nations Association of the United States, the Secretary's Advisory Committee on International Economic Policy, and the Carnegie Foundation. Others are engaged in on-going studies on sanctions, such as the Center for Strategic and International Studies. USA*ENGAGE has been formed with over 600 US member companies solely for the purpose of dealing with the sanctions issue from an American business perspective.

Most of these studies reach similar conclusions and criticisms of the current use of sanctions. According to these studies, sanctions, particularly unilateral economic sanctions, are often seen as undisciplined, poorly targeted and/or ineffective. Measures may be overly broad--like applying a meat cleaver where laser surgery would be more appropriate--and the consequences are not well thought through. Decisions to impose sanctions may be made with little or no analysis of the actual impact the proposed sanctions are likely to have on various groups within the target country, or on how economic pressure is likely to be translated into political pressure. Alternatives such as diplomatic measures, sometimes more effective, may not always be considered.

Some also argue that the cost to the US economy and US competitiveness can be disproportionate to the results achieved. The President's Export Council, for example, recently

estimated the direct cost of economic sanctions to the US economy in 1990s at $15-19 billion in lost export sales and up to 250,000 jobs. It also suggested that sanctions have an indirect effect through undermining confidence in the reliability of US suppliers and providing a competitive advantage to foreign competitors. Other studies have also pointed to lost exports and lost jobs, to cases where US components are specifically designed out of products because the producers do not wish to face the prospect of eventual restrictions on exports to particular markets, and to reports that foreign firms have intentionally switched R&D away from the US to Europe because of a desire to avoid sanctions problems.

The imposition of sanctions may also place us in difficult policy dilemmas. Would, for example, the imposition of strict sanctions on Syria, a country on our terrorist list (and with good reason), be consistent with our desire and need to engage Syria in the most cooperative way possible in seeking peace in the Middle East?

It is unfortunately also true that too often a decision to impose sanctions may be taken reactively, to demonstrate moral indignation or the resolve to be seen as doing something--without any real consideration of whether the measures imposed will be an effective means of advancing our goal and without consideration of the costs along with the benefits. H.R. 2431 (the Wolf-Specter) Freedom from Religious Persecution Act) is, we believe, as case in point. While we agree with the goal of the bill and have made respect for religious freedom a top priority in our human rights policy, as originally constituted the bill could actually undercut our efforts to promote the very

values that the bill seeks to foster: adversely impacting our diplomacy in regions from South Asia to the Middle East, and undermining our efforts to promote the very regional peace and reconciliation that can foster religious tolerance and understanding. H.R. 2431 is an excellent example of the need for the Administration and Congress to work together to craft the kind of legislation that will be effective in meeting our common goals. This is not to say that we should forswear the use of sanctions, or that sanctions are an inappropriate tool. They do have a role to play in our panoply of tools to defend US interests. There is a great need for more dialogue and engagement between the Executive and Legislative branches, more opportunity for comment by the public, and more careful attention to all the potential consequences before we leap. The issue is how we can ensure that this potentially valuable tool is an effective instrument of policy while minimizing the costs.

The studies to which I have referred generally indicate that thoughtfully designed and implemented, sanctions may be an effective policy tool. The task we face is to substantially reduce negative effects while still achieving policy goals. Critics recommended a number of both policy and process changes. These include: broader and more methodical consideration of policy alternatives, increased emphasis on multilateral sanctions, improved consultation and coordination between Congress, the Administration and State and local governments, and revisiting sanctions if the objectives are not achieved in a reasonable period of time. The mixed results of various sanctions regimes, both multilateral but especially unilateral; the lack of an agreed "standard of performance" against which to measure the utility of sanctions; the economic and other

costs imposed on those imposing the sanctions and on third countries; the differences which unilateral sanctions-with an alleged extraterritorial impact in particular have caused with our allies, who may share our objectives but disagree with our tactics; all have led to a growing number of calls to reexamine, to rethink the way in which we use sanctions. Here are some of the lessons we have learned from our growing experience with sanctions:

First, as a general rule, we should resort to sanctions only after other appropriate diplomatic options have been aggressively pursued and have failed or would be inadequate. Sanctions are, after all, only one of many measures available to us, from symbolic measures like withdrawing an Ambassador, reducing Embassy staff, to denying visas to target figures, entering into security arrangements with neighboring countries, to military intervention and everything in between. We should also not forget the power of positive inducements--rewarding desired behavior.

Second, a major objective of sanctions is to change behavior. That implies that a primary consideration in considering a sanctions regime must be whether or not the sanctions measures are indeed likely to be-effective in achieving that goal and whether they are part of an integrated strategy. Sanctions that are ineffective, that are easy to evade or avoid, that are imposed merely to "make a statement," are not only pointless in achieving our objectives, but in the longer run debase and undermine the value of sanctions as a potent foreign policy tool.

Third, we should design sanctions carefully so that, to the maximum extent possible, the target country feels the pain, not the innocent and certainly not solely our business community and citizens. Sanctions should be constructed so as to minimize the cost to the U.S. and its allies while extracting maximum leverage. Whether we act alone or in concert with others, we should analyze before we penalize, studying in advance the specific purpose, enforceability, cost and likely effect of any decision to impose sanctions.

Fourth, sanctions are much more likely to be effective when they have multilateral support and participation. Multilateral sanctions maximize international pressure on the offending state. They show unity of international purpose. And, because they are multilateral, these sanctions regimes are also more difficult to evade or avoid, while minimizing damage to U.S. competitiveness and more equitably distributing the sanctions burden across responsible countries. We should make a maximum effort to develop a multilateral sanctions regime in instances when sanctions are a viable option, and given a reasonable period of time to develop an international consensus for such sanctions.

Fifth, if we have been unsuccessful in achieving a multilateral regime, we must nonetheless recognize that, while our preference will be to act multilaterally, there are times when the stakes are so high, when important national interests or core values are at issue, that we must also be prepared to act unilaterally. Such actions must be considered, sometimes applied, if the United States is to play a leadership role. Otherwise, our ability to influence or respond to international

or regional threats will always be subject to someone else's veto. But again, primary considerations in any eventual application of unilateral sanctions must be whether they are effective, whether they are part of a cohesive strategy to change behavior, and whether they contribute to or detract from our efforts to gain multilateral support for our policy objectives. There generally should be some reasonable expectation that the sanctions will have a significant impact on those targets, and that there is some expectation they can be effectively implemented and enforced.

Sixth, we must recognize that in our democratic system the impulse to impose sanctions is by no means restricted to the Executive Branch. If our policies are to be effective, we must work together--Administration, Congress, communities at the state and local level, the business community, NGOs--to see that our use of sanctions is appropriate, coherent, and designed to attract international support. Congress should go through the same careful consideration and balancing of interests as the Executive Branch. There must be more structured, systematic discussions between the Executive Branch and Congress when sanctions are an option.

Seventh, engagement is more often better than isolation though the choice is usually not between these two extremes There are many countries which engage in certain practices or policies which we find objectionable, which we seek to change. We need to tailor our approach, whether carrots or sticks or a mix of the two, to fit the individual target. In many cases, engagement at every level may be a better, a more effective way to achieve our intended result. In such cases, engagement,

including engagement by the US business community, will contribute a positive influence. Cutting off dialogue and engagement with those countries would be counterproductive. In other countries, critical US interests may be so involved that isolation is simply not an option, as is the case with China, where not simply economic but important security interests in the Pacific are at stake. Even during the height of the so-called "evil empire," for example, the Reagan Administration sought to both engage and change the Soviet Union.

In other cases, however, the practices of a country may be so egregious, so outside the norms of international behavior, so threatening to US interests and those of our allies, that any attempt at engagement is pointless. Engagement with a country such as Iraq would simply feed Saddam Hussein's appetite for inappropriate behavior. In the case of Iran, economic pressure is one component of a policy designed to demonstrate that countries which want to benefit from full participation in the international community must abide by accepted norms of international behavior. Pending such a change, our approach limits the capacity of Iran to support terrorism or acquire weapons of mass destruction.

Eighth, the President, the custodian of the country's foreign policy under the Constitution, must be given discretion to waive sanctions in the national interest. This authority, or example in Title III of the Libertad Act (Helms-Burton) has been used effectively to help build an international consensus to take a much tougher position to encourage democracy and human rights. The Administration, which is charged with carrying out our foreign policy, must have the flexibility to

tailor our response to specific situations. There can be no "one-size fits all" approach.

Ninth, Mr. Chairman, experience has shown that the development early on of appropriate consultative mechanisms with countries which share our goals can be helpful on states of critical concern. While such mechanisms do not guarantee results, the absence of such a mechanism can almost certainly guarantee failure.

* * *

Let me turn now, Mr. Chairman, to two special cases, ILSA and the Libertad Act. I would venture to say that no nation's behavior poses a greater threat to US political and security interests than that of Iran. Iran's support for terrorism, its efforts to obtain weapons of mass destruction and the means to deliver them, and its efforts to disrupt the peace process in the Middle East are intolerable. They threaten our friends, allies, and interests in the Persian Gulf, the Middle East and beyond. As the Mykonos decision in Germany indicated, the reach of Iran's terrorist activities extends to Europe, as well. The behavior of the Iranian regime is dangerous and unacceptable. It has been for years and remains so. Even with the new government and the possibility of change which it may present, we see no sign that Iran has changed its external behavior in areas of critical concern to us and to our allies as well. It is a matter of great frustration that some of our allies do not seem to share our sense of urgency in confronting Iran's dangerous behavior and convincing the new Iranian government of the need for change.

We are not prepared to carry on business as usual with the

Iranian regime, and we feel very strongly that our friends and allies should not do so either. We supported the Iran and Libya Sanctions Act (ILSA) only after our earlier bilateral and multilateral efforts failed to produce change in Iran's behavior in areas of critical concern to us. In the case of Iran, efforts were made for years to develop a multilateral consensus inhibiting Iran's efforts to acquire weapons of mass destruction and deter support for global terrorism. They were not fully successful. Our allies have resisted trade and investment sanctions that impose economic pressure on Iran. Europe joined us in some efforts to prevent Iran from acquiring the technology and components needed to build weapons of mass destruction. Europe's "critical dialogue" was designed to engage Iran but had no apparent effect in altering its unacceptable behavior. The "critical dialogue" seemed, at times, less critical and more a design for economic benefit.

Nonetheless, the sanctions provided by ILSA are not an end in themselves, but the means to further our goal of denying to Iran the ability to carry on its highly objectionable behavior. That is why ILSA also includes a provision for a waiver of the law towards any country that agrees to undertake substantial measures, including economic sanctions, to inhibit Iran's behavior. We are committed to working with our allies in the EU and others to build an effective multilateral coalition that would increase our cooperation on Iran. European Union members, for example, believe that their existing cooperation in the various nonproliferation agreements--such as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies, the Missile Technology Control Regime, and the Nuclear Suppliers,

Group--and their on-going efforts to fight international terrorism provide an adequate basis for the Administration to grant country-wide waivers. We do not. These steps are important and we should not be dismissive of them. But they are not enough. We believe that they should do more to address our common concern regarding Iran, particularly on the issues of their pursuit of long range missle capability, weapons of mass destruction, terrorism, and sales of sensitive technology, but we should not be dismissive of the steps taken so far. In the wake of the Mykonos decision, the EU has withdrawn its Ambassadors and suspended its critical dialogue, although we cannot be certain that these measures will continue. Of more lasting importance are the commitments barring arms transfers. Nevertheless , we have told the EU we will not be in a position to grant country-wide ILSA waivers based on these measures alone.

We are undertaking a thorough investigation of foreign investment in two Iranian energy projects--one in the Balal field involving the Canadian company Bow Valley and the Indonesian company Bakrie and another in the South Pars field in which the French company Total, the Russian company Gazprom and the Malaysian company Petronas are reportedly large investors. We are making every effort to gather as expeditiously as possible the necessary information to establish whether sanctionable activity under ILSA has occurred. Since we take the possibility of sanctions very seriously, we want the information on these cases to be as complete and accurate as possible. While we have not made any final decision, we are committed to fully implementing the law.

Our Cuba policy is illustrative of one of the principal goals of economic sanctions--to encourage our friends and allies to adopt policies that can advance our common interests. Our allies and major trading partners disagree with our embargo of Cuba and have urged us to change or alter the provisions of the Libertad Act. At the same time, our allies have said they agree with us on the key goal of encouraging democracy and human rights in Cuba.

Last year, the President, for the first time in the 37 years since Castro took power, launched a broad effort to develop a multinational approach to promote democracy in Cuba. The President's initiative built on years of bipartisan policy towards Cuba.

The President launched this initiative when he acted to suspend the right of claimants to file suit under Title III of the Libertad Act. He wanted to use the opportunity presented by the six-month suspension to explore whether US friends and allies were prepared to do more to achieve our common objective of expediting a peaceful transition to democracy in Cuba. I was appointed as Special Envoy for the Promotion of Democracy in Cuba.

After months of effort, thorough consultation with the Congress and the Cuban-American community, and thousands of miles of travel by myself and many dedicated people, we have succeeded in launching an unprecedented, multilateral effort that has changed the terms of the discussion about Cuba. Much more can, should, and will be done, but today we can genuinely say that Cuba's government is increasingly isolated

and under growing pressure to launch fundamental democratic change.

Our initiative has involved governments, non-governmental organizations, and the private sector. As part of our April 11 Understanding with the EU on Helms-Burton, we are seeking to reach an agreement on disciplines on investment in properties expropriated in contravention of international law, and to address questions of conflicting jurisdiction. Agreement on such disciplines would make an important contribution to advancing a key Helms-Burton objective, that is, to deter foreign companies from unfairly acquiring assets that have been confiscated from US nationals by governments, like the Castro regime, which refuse to abide by international norms.

Last week we held another round of talks with European Union representatives. While we still have significant differences with the EU, both sides agreed that we should continue the talks since we are making progress and see promising areas for future work.

EU representatives have said they are disappointed that no agreement was reached at this last round. So are we. Both the EU and the US will benefit from additional protections afforded to our investors.abroad by effective and enforceable disciplines on investments in confiscated properties. And we can both benefit from avoiding problems arising from so-called conflicting jurisdiction, which have been at issue in connection with Helms-Burton and other legislation. That is why we proposed, as part of the agreement, a high-level consultative mechanism to encourage discussion before either side acts.

Closer cooperation with our international partners in responding to threats posed by states that refuse to respect international norms will be more effective in changing unacceptable behavior and will be less likely to result in conflicting policies which undercut our respective interests.

* * *

In conclusion, as the world becomes more interdependent, as we move forward to establishing codes of acceptable international behavior and the will to enforce them, the effective application of sanctions will be a real asset. But it is no panacea. Thus it is all the more important that we undertake a rigorous analysis of sanctions before we impose them. We need to know not only how they will affect the target governments, but also how they affect vulnerable groups within the target countries. We also need to know how proposed sanctions affect US interests in other areas, including US business and workers, and how they affect our international partners on whose cooperation we depend to advance key foreign policy goals.

Sanctions can be an effective tool to punish states that violate international norms and threaten vital US interests. And we must keep this tool at our disposal. But we need to work to sharpen our ability to use it effectively. One lesson is that taking time to forge a consensus both at home with the American people and abroad with our allies can greatly increase the effectiveness of sanctions and reduce the cost to the United States. Building such a consensus in many cases does not come quickly. However, it can help to avoid problems down the road while demonstrating to the offending state that our nation and the international community are united in

opposing its unacceptable behavior.

Sanctions are intended to send a serious message. Both Congress and the Administration need to ensure that, when we do choose to impose them, we do so in a way that has the greatest possible impact with the least possible damage to the US business community, to American workers, and to other US interests.

STUART E. EIZENSTAT
Under Secretary of State for Economic, Business and Agricultural Affairs Department of State

Testimony of
Deputy Assistant Secretary David Marchick
before the California State Assembly
October 28, 1997

It is great to be back in California, my home state. I would like to discuss with you our shared interest in promoting U.S. national security, strengthening protection of human rights and enhancing U.S. competitiveness, export markets and jobs.

Let me begin by saying a few words about exports, jobs and competitiveness.

The world is growing increasingly interdependent. In 1970, U.S. imports and exports were equivalent to 13 percent of gross domestic product (GDP). Now that figure is 30 percent, up from 25 percent in 1992. The U.S. is the largest exporter in the world, exporting over $780 billion worth of goods and services in 1995. Much of this growth in exports is due to the performance of states like California. In the first 6 months of 1997, goods exports from California were running at a rate of $107 billion -- up 45% since 1992--making California America's largest exporting state. If California were a separate nation, it would be one of the largest exporting countries in the world, placing it ahead of Mexico, Switzerland and Brazil. Due in part to our export performance, the U.S. ranked number one in competitiveness for three years in a row and the American economy continues to produce more jobs and more growth than any other major industrialized country. Our prosperity as a nation depends on our ability to compete in international markets. 95 percent of the world's consumers live outside of the U.S., many of them in dynamic, emerging

markets in Latin America and Asia that are growing much faster than our traditional export markets. We can benefit from their growth--but only if their markets are open to our products since our markets are already open to theirs.

Opening markets is critical for creating high wage job opportunities for U.S. workers. Exports support roughly 11 million American jobs. One million of these jobs are generated from agricultural exports like California grapes, beef and almonds. California is America's largest agricultural exporting state, shipping 12% of total U.S. agricultural exports. Today, 1.3 million jobs in California are supported by trade -- an increase of 17% or 187,200 jobs since 1992. These trade related jobs are good ones, paying Californians an average of 15 percent more than non-trade related jobs.

America benefits from free trade that is also fair trade, and this Administration has worked hard to ensure that other countries live up to their word. We have frequently used the World Trade Organization's (WTO) dispute settlement system to enforce our rights. We have filed and won more dispute settlement cases in the WTO than any country in the world. We have benefitted from clearer rules on government procurement which has opened billions of dollars of procurement opportunities for U.S. firms and workers.

Working toward creating a level playing field has benefitted California. For example, the Government procurement Agreement has enhanced access for U.S. companies. California-based companies or companies with facilities in California have won: a $130 million contract to build a satellite for Telenor, Norway's telephone company, and a $30 million contract to bring on line Europe's largest

windmill park in the North of the Netherlands. These companies are also in contention for other projects. For example, Hughes and Lockheed-Martin have bid to sell Telenor an additional satellite worth over $200 million.

Now let me turn to the issue of sanctions. Economic sanctions are an important foreign policy tool intermediate between diplomacy and the use of force. They are used when other measures have been insufficient and when their imposition is likely to change the behavior of the offending state.

Sanctions are not a "one-size-fits-all" foreign policy tool, however. When applying sanctions, if it has the requisite flexibility, the Administration designs a sanctions regime to target the vulnerabilities of the sanctioned country and target effectively the offensive behavior, while minimizing the damage to U.S. interests.

Sanctions are intended to highlight misconduct by rogue regimes, and alter the behavior which threatens our national interests and the stability of the international community. Sanctions address misconduct in the areas of human rights, terrorism, narcotics, weapons of mass destruction, and other areas where such conduct is considered unacceptable by world standards.

To maximize their effectiveness, we prefer sanctions which have multilateral support and participation wherever possible. Multilateral economic sanctions are not only more effective vis-a-vis the target, but they also show unity of international purpose, minimize damage to U.S. competitiveness. and distribute the sanctions burden across responsible countries.

However, we are prepared to use unilateral sanctions when important national interests are at stake. The Clinton Administration has at times employed sanctions to promote human rights or isolate rogue regimes. The president has banned new U.S. investment in Burma to spur the repressive regime in Burma. He signed the Liberated Act to prevent Cuba, the only non-democratic nation in our hemisphere, from profiting from investment in properties confiscated from Americans. He signed the Iran-Libya Sanctions Act to punish Iran and Libya for state-sponsored terrorism. Simultaneously with these actions, the Administration has launched vigorous diplomatic initiatives to encourage other countries to pursue our shared goals.

While we recognize and share state governments' frustration and often outrage at certain countries' unacceptable behavior, we are concerned about the growing number of state and local measures and the message they send to the rest of the world. The President has made it clear that this Administration will challenge the unacceptable behavior of rogue states wherever they are in the world. The Secretary of State has told other countries that the U.S. is prepared to pay the cost of leadership and, if necessary, to go it alone when it comes to delivering a clear message of condemnation to these regimes. Secretary Albright has not pulled any punches -- as diplomats often do -- in expressing the United States outrage at egregious violations of human rights and international norms in countries like Cuba, Burma and Iran.

Our first concern is over whether these sanctions are effective in pursuing the goals we all share. As I said before, to be most effective, sanctions should have multilateral support

and participation wherever possible. While we are the largest economy and most important country, sanctions by the U.S. alone -- or certain states alone -- may not have the desired impact because they can be circumvented. Sanctions often are ineffective unless they are supported by other key countries around the world.

We are also concerned about the impact of sanctions on our domestic economy. While sanctions serve an important foreign policy purpose, they are not without cost. The cost is measured in foregone economic opportunities by countries that put these measures in place. One private sector group estimates foregone opportunities for the U.S. alone in 1996 at $15-19 billion dollars in unrealized exports and the loss of over 200,000 jobs in export-related sectors of our economy.

Second, from the Department of State's perspective, we are concerned that state and local sanctions may impair the President's ability to send a clear and unified message to the rest of the world. As the world's only economic and military super power, the United States has the obligation to project a coherent and consistent message. We would like to work with you to try to send a clear message to oppressive regimes. But ad hoc and scattered actions at various levels of government, however well-intentioned, can do more harm than good in achieving the desired objective and impede the President's and Secretary of State's conduct of foreign policy. They also can create conflicts with our allies with whom we need to work to achieve our common goals.

For example, a variety of state and local officials -- including in California -- recently began considering the imposition of various economic sanctions on Swiss banks and

other Swiss institutions in order to force an accounting for assets of Holocaust victims. Our goal is to provide justice for Holocaust victims, not to punish the Swiss people or their government. The U.S. Government has already issued a very hard-hitting report on the facts in the issue, and the Swiss have taken strong steps to account for the past. But now is the time for cooperation with the Swiss, not confrontation. According to Stuart Eizenstat, Under Secretary of State and the President's point person on this project, state actions at this time are counterproductive, particularly given positive steps the Government of Switzerland is taking to address the issue. Such actions threaten to harden Swiss public opinion against a referendum to create a multibillion dollar humanitarian fund. These sanctions efforts also complicate our government's ability to develop a healing and reconciliation process that helps uncover the truth.

Third, if states do want to express concerns or viewpoints on particular human rights abuses or other objectionable behavior by foreign regimes, we would like to work with them to ensure that these actions complement U.S. foreign policy objectives and are consistent with our international treaties and agreements. As, I mentioned before, as the world's largest exporter, no country does better than the United States when countries follow internationally developed rules. At the same time, the United States must also play by the rules. If state and local sanctions are perceived to violate the rules, they can cause counterproductive disagreement with nations that share the same values and are otherwise inclined to follow our lead in pursuing our foreign policy goals.

Often state and local sanctions can have unintended effects that are counterproductive or divert attention from their original goal. In June 1996, Massachusetts enacted a law applying a price penalty on procurement from companies that have business operations in Burma. The European Union and Japan have initiated dispute settlement consultations in the World Trade Organization over this law, alleging that it violates U.S. obligations under the WTO Government Procurement Agreement.

Our trading partners claim that the Massachusetts law violates provisions of the Government procurement Agreement which, among other things, requires that government contracts be awarded on the basis of objective economic considerations and precludes the application of political criteria.

We are working with the Commonwealth of Massachusetts on this issue, just as we continue to work with the European Union, Japan and others to improve the situation in Burma. Let me be clear. We will defend the rights of the United States in the WTO dispute settlement process. But we must be honest in saying that the threatened WTO case has been an irritant and has diverted the United States' and Europe's attention from focussing where it should be -- on Burma.

Finally, I know that questions have been raised about the constitutionality of state sanctions, and I'm not here to debate that issue, but I can say that state and local sanctions do have the practical effect of interfering with the president's ability to conduct our foreign policy.

My main message today is one of partnership -- an offer to work closely with you to respond to egregious threats to our national security, our interest in enhancing human rights, or our

values. Just as we have reached out to you, we have also consulted with the National Governors' Association, the Association of State Attorneys General, the National Conference of State Legislators, and the National Association of State Procurement Officers.

I hope that we can work together to send the right message to governments that do not respect the basic human rights of their citizens by only taking actions that will be effective and not ones which will strengthen the position of rogue states and divert the U.S. and other countries from our purpose. Our aim is not to try to halt state actions -- rather, we would like to work with you to encourage the judicious and appropriate use of such action. We aid pariah states when the United States does not speak with one voice. We also become embroiled in disputes that could easily be avoided by following a basic American value: living up to our commitments as individuals and as a nation. These avoidable disputes distract us and the nations whose cooperation we need to bring to bear the maximum pressure possible to bring about meaningful change in the lives of the citizens of Burma and elsewhere.

Once again, thank you for the opportunity to speak on these important issues. I look forward to working with you as we move forward.

Drafted:EB/MTA/STA:BPSoila/MJWills
SESTRADE 13314
Cleared:
E : SEizenstat
EB/TPP : DMarchick
USTR:JLang NSC : ESchwartz

CHOATE HALL & STEWART

October 28, 1997
By hand and fax

Harold Fisher, Esq.
General Counsel
Operational Services Division
Executive Office of Administration and Finance
One Ashburton Place, Room 1017
Boston, MA 02108-1552

Re:
Burma (Myanmar) Restricted Purchase List

Dear Mr. Fisher:

The Agfa-Gevaert Group ("Agfa") has informed me that it does not now have a distribution agreement with any entity directing the sale of its products into Burma (Myanmar), and is not otherwise doing business in Burma (Myanmar) as defined in Chapter 130 of the Massachusetts Acts of 1996.

Inasmuch as Bayer AG was named by the Investor Responsibility Resource Center as doing business in Burma because it is the parent of Agfa, and in light of the above information, we request that neither Bayer AG nor Agfa be placed on the Commonwealth's Restricted Purchase List.

In conclusion, based on the information contained

herein and in my letter of October 21, 1997, there is now no basis to include Agfa or Bayer AG, as Agfa's parent, on the Restricted Purchase List. This letter supersedes my letter to the State Purchasing Agent, Mr. Philmore Anderson, dated October 8, 1997. As you know, we have attempted to respond to your office's inquiry as expeditiously as possible. As a consequence, we ask that you accept the representations made herein in lieu of an affidavit from Agfa.

Harold Fisher, Esq.
October 28, 1997
Page 2

Please let us know at your earliest convenience whether you need additional information.

Sincerely,
/s/
Jonathan Chiel

cc: Kenneth E. Steinfield, Esq.

CHOATE, HALL & STEWART

October 21, 1997
By hand and fax
Harold Fisher, Esq.
General Counsel
Operational Services Division
Executive Office for Administration and Finance
One Ashburton Place, Room 1017
Boston, MA 02108-1552

Re: Burma (Myanmar) Restricted Purchase List

Dear Mr. Fisher:

As you requested, this is to update you on the above matter. We are currently working with our client, Agfa-Gevaert, to determine the status and nature of its arrangements with its Malaysian distributor. Agfa-Gevaert is seriously considering, as an option, the termination of that agreement, provided that such termination would satisfy the Secretary of Administration and Finance with respect to the exclusion of the company from the Restricted Purchase List. However, due to the size and structure of the companies involved --the Agfa-Gevaert Group is made up of German and Belgian companies and is headquartered in Germany --and the complexities of the issues raised, it will take time for a decision to be reached. Agfa-Gevaert expects to be in a position to make that decision within 45-60 days.

As we discussed, Agfa-Gevaert is very concerned regarding the ramifications which may potentially arise from its placement on the Restricted Purchase List, including possible damage to its business and reputation. We therefore respectfully request that you provide Agfa with sufficient time to resolve the issue, particularly when such damage may be entirely avoidable and where the Commonwealth may achieve its goals as described above.

While we believe and hope that it may be settled amicably, as I told you, this matter and the potential for damage to Agfa's reputation is so serious that the company may be compelled to consider litigation challenging the statute on various grounds. We believe that a reasonable extension of time, as requested herein, will help in great measure to resolve the matter without the need to resort to litigation.

In short, in light of the above, we believe that deliberate decisionmaking [sic] based on complete information is in everyone's best interest, and that careful consideration by the Secretary and your office is required before any decision is made regarding amendments to the List. We therefore respectfully request that you defer consideration of the placement of our client on the Restricted Purchase List until December 15, 1997 to give the parties sufficient time to work together to bring this matter to an amicable and mutually beneficial resolution.

It is my understanding from our conversations that you are willing to grant us such time given the facts as stated above. I would greatly appreciate written confirmation of such an extension.

Thank you very much for your cooperation and assistance in this matter. Please do not hesitate to contact me at any time to discuss any of the issues raised herein.

Sincerely,
/s/
Jonathan Chiel

cc: Kenneth E. Steinfield, Esq.

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STATE AND MUNICIPAL SANCTIONS REPORT
DECEMBER 1, 1997

PENDING

State/MuniC..	Target Country	Description	Status
Chicago, IL	Switzerland	*Ordinance 97-314.* Selective investment measure. Prohibits the city from depositing or investing public funds in financial institutions doing business in Switzerland.	After a 5/9 hearing the Finance Committee, noting positive action by Switzerland and Swiss financial institutions, delayed further action until Fall.

Davis, CA	Burma	*Resolution.* Selective Purchasing measure. Prevents the city from purchasing goods or services from companies doing business in Burma.	The measure was introduced by the City's Human Relations Commission. After a 9/24 Council meeting, the measure was returned to the Commission for an analysis of its impact on the city's procurement. Further consideration by the Council is not likely in the near term.

State/Muni.	Target Country	Description	Status
Los Angeles, CA	Burma	*Motion Ref. No. 97-18-61.* Sponsored by Councilman Alarcone. Directs the Chief Legislative Analyst (CLA) to prepare a report on other municipalities restricting purchases with companies doing business in Burma and to provide a draft ordinance within 45 days.	The motion was introduced and referred to the Budget and Finance & Intergovernmental Relations Committees on 10/7. The CLA continues gathering information for the report and, possibly, a draft ordinance to be considered later this year.
Mass.	Indonesia	*House Bill 4575.* Selective purchasing and investment measure. Prohibits the state from contracting with companies and financial institutions doing business in Indonesia.	Reported out of the Joint State Administration Committee on 5/28 and referred to the House Ways and Means Committee on 6/12.

New Jersey	Switzerland	*Assembly Bill 32351.* Selective investment measure. Requires the state to divest pension funds from Swiss banks and financial institutions.	A.B. 3251 was introduced and referred to the Financial Institutions Committee on 11/6. Sponsored by Assemblyman Weingarten and O'Toole.

State/Munic.	Target Country	Description	Status
		Assembly Bill 2901 & Senate Bill 2034. Prohibit the state from employing Swiss financial institutions, not complying with certain agreements, in connection with the sale of its temporary disability benefits plan.	A.B. 2901 was introduced and referred to Appropriations Committee on 5/5. S.B. 2034 was introduced and referred tot he State Management Committee on 5/8.
		Assembly Bill 2822 & Senate Bill 1966. Selective purchasing and investment measures.	A.B. 2822 and S.B. 1966 remain in their respective State Governmetn Committees.

New York	Multiple	*Assembly Bill 5753 & Senate Bill 3513.* Provides for the revocation of state banking licenses for foreign financial institutions determined to be in illegal possession of funds belonging to holocaust victims.	A.B. 5753 was introduced and referred to the Banks Committee on 3/4. S.B. 3513 was introduced and referred to the Banks Committee on 3/12.
New York	Switzerland	*Senate Bills 4185 & 4763* . Selective purchasing and investment measures. Prohibit the state from purchasing goods or services or investing public funds in companies doing business in Switzerland.	S.B. 4185 remains in the Civil Service and Pensions Committee. S.B. 4763 remains in the Corporations, Authorities and Commissions Committee.

The information contained in this report was compiled by the Organization for International Investment (OFII). Please contact Alexander Williams at (202) 659-1903 if you have any additions or changes to the report, are aware of state and municipal measures not listed here or know of a change in a measure's status. Entries in BOLD have been added or changed from the previous report.

State/Munic.	Target Country	Description	Status
New York, NY	Switzerland	*Intro 905.* Selective investment measure. Prohibits city from depositing or investing public funds in Swiss financial institutions.	Since introduction and consideration in early February the bill has not progressed.
Pennsylvania	Multiple	*House Bill 1855.* Provides for the revocation of state banking licenses for foreign financial institutions not cooperating in the distribution of dormant accounts of victims of Nazi persecution.	H.B. 1855 was introduced and referred to the Commerce and Economic Development Committee on 10/1.
	Switzerland	*House Bill 1854.* Prohibits the state from investing public funds in any bank or financial institution, including affiliates, chartered in Switzerland and failing to comply with certain reparation agreements.	H.B. 1854 was introduced and referred to the Finance Committee on 10/1.

State/Munic.	Target Country	Description	Status
Rhode Island	Indonesia	*House Bill 6721* and *Senate Bill 984*. Selective investment measures. Prohibit the state from investing in companies and financial institutions doing business in Indonesia. S.B. 984 also prohibits purchasing Indonesian goods.	H.B. 6721 remains in the House Finance Committee. S.B. 984 remains in the Senate Corporations Committee. The Legislature is currently recessed and will reconvene sometime in January.

Seattle, WA	Burma	Selective purchasing measure. Penalizes companies with direct investments and/or employees in Burma in the city's bidding process for contracts with a value of $100,000 or more. Bidders with no business ties in Burma will be preferred to those which do have business ties in Burma, when the process results in two equally low bids.	The Business, Economic and Community Development Committee discussed the proposed sanction on multiple occasions, but delayed voting each time. The measure is now in its third revision. The committee will host a panel discussion with 3 speakers for and 3 opposed to the sanction in the near future. Consideration by the full council is possible following this event.

INACTIVE

State/ Municipality	Target Country	Description	Status
California	Burma	*Assembly Bill 888.* Selective purchasing and investment measure. Requires individuals and companies contracting with the state to certify, under penalty of perjury, that they have no business ties with Burma.	After the International Trade Committee's April hearings, the bill was sent to an Interim Study Subcommittee. Effectively killing it for this year. On 10/28, the Committee, held a broadly defined hearing on the issue of sanctions.
Connecticut	Burma	*House Bill 6354.* Selective purchasing measure. Prevents the state from purchasing goods or services from companies doing business in Burma.	On 3/27 the bill was put on the House calendar, where it remained. On 6/4 the Legislature adjourned, killing the bill.

New York, NY	China, Cuba, Egypt, Indonesia, Iran, Iraq, Laos, Morocco, Nigeria, North Korea, Pakistan, Saudi Arabia, Sudan, Turkey, Vietnam.	*Intro 960.* Selective purchasing, selective investment and divestiture measure. Prohibits the city from purchasing goods and services from or entering into a contract with, or depositing and investing funds in companies doing business with the fifteen listed countries. Requires already invested city funds to be removed.	Introduced on 5/14, by Council Chairman Peter Vallone, the bill was referred to the Government Operations Committee. Through the advocacy efforts of USA *Engage and the New York City Partnership, Vallone was persuaded to accept optional business principles as an alternative to the bill. The agreement was announced on 10/9 and has been confirmed by committee staffers.

North Carolina	Burma	*Senate Bill 1054.* Selective purchasing measure. Authorizes and encourages counties, cities and local boards of education to establish purchasing requirements concerning companies with ties to Burma and the use of public funds.	After passing the Senate, the bill was referred to the House Commerce Committee on 5/8. Committee chairman David Miner opposed the measure. The bill is dead as the Legislature adjourned for the year on 8/28.
Texas	Burma	*House Bill 2960.* Selective purchasing and investment measure.	Following an 4/23 hearing, the State Affairs Committee decided not to vote on the bill. The Legislature has adjourned for the year and the measure is dead.

*The information contained in this report was compiled by the Organization for International Investment (OFII). Please contact Alexander Williams at (202) 659-1903 if you have any additions or changes to the report, are aware of state and municipal measures not listed here, or know of a change in a measure's status. Entries in BOLD have been added or changed from the previous report.

LAW

State/ Municipality	Target Country	Description	Status
Alameda County,CA	Burma	Selective Purchasing and Investment.	Enacted December 1996.
Alameda County, CA	Nigeria	Selective Purchasing and Investment.	Enacted October 1997.
Amherst, MA	Nigeria	Selective Purchasing and Investment.	Enacted September 1997.
Ann Arbor, MI	Burma	Selective Purchasing.	Enacted April 1996.
Berkeley, CA	Burma	Selective Purchasing.	Enacted March 1995
Berkeley, CA	Nigeria	Selective Purchasing.	Enacted July 1997
Berkeley, CA	Tibet	Selective Purchasing.	Enacted June 1997
Boulder, CO	Burma	Selective Purchasing.	Enacted December 1996
Brookline, MA	Burma	Selective Purchasing.	Enacted November 1997
Cambridge, MA	Nigeria	Selective Purchasing.	Enacted May 1997
Carrboro, NC	Burma	Selective Purchasing.	Enacted October 1996
Chapel Hill, NC	Burma	Selective Purchasing.	Enacted January 1997
Dade County, FL	Cuba	Selective Purchasing and Investment.	Enacted July 1992. Updated June 1993*
Madison,WI	Burma	Selective Purchasing.	Enacted August 1996
Massachusetts	Burma	Selective Purchasing.	Enacted June 1996
New York, NY	Burma	Selective Purchasing and Investment.	Enacted May 1997
Newton, MA	Burma	Selective Purchasing.	Enacted November 1997.

State Municipality	Target Country	Description	Status
Oakland, CA	Nigeria	Selective Purchasing Investment.	Enacted May 1997.
Oakland, CA	Burma	Selective Purchasing and Investment.	Enacted May 1996.
Palo Alto, CA	Burma	Selective Purchasing.	Enacted October 1997.
Quincy, MA	Burma	Selective Purchasing.	Enacted November 1997.
San Francisco, CA	Burma	Selective Purchasing.	Enacted April 1995.
Santa Cruz, CA	Burma	Selective Purchasing and Investment.	Enacted July 1997.
Santa Monica, CA	Burma	Selective Purchasing.	Enacted November 1995.
Takoma Park, MD	Burma	Selective Purchasing.	Enacted October 1996.
West Hollywood, CA	Burma	Selective Purchasing.	Enacted October 1997.

*Broadened to include companies violating the Cuban Liberty and Democracy Act.

NEWMONT MINING CORPORATION

December 2, 1997
Mr. Philmore Anderson
State Purchasing Agent
Executive Office for Administration and Finance
Operational Services Division
Commonwealth of Massachusetts
One Ashburton Place
Boston, Massachusetts 02108-1552

Re: Restricted Purchase List; Ch. 130 of the Massachusetts Acts of 1996

Dear Mr. Anderson:

By letter dated January 31, 1997, your office notified Newmont Mining Corporation that Newmont had been placed on the restricted purchase list pursuant to Chapter 130 of the Massachusetts Acts of 1996, "An Act Regulating State Contracts with Companies Doing Business with or in Burma ("Myanmar").

Please be advised that, effective July 12, 1997, Newmont Mining Corporation's affiliate, Newmont Mineral Exploration B.V., terminated its existing agreements with the No. 2 Mining Enterprise, a Burmese state economic enterprise. Aside from winding up the affairs of Newmont Mineral Exploration B.V., neither Newmont Mining Corporation nor

any of its affiliates is currently conducting operations in or doing business with Burma. Accordingly, please remove Newmont Mining Corporation from your restricted purchase list. An affidavit regarding this matter is enclosed.

If you have any questions, please give me a call at (303) 837-5998.

Very truly yours,
/s/
Britt D. Banks

cc: Lawrence Kurlander

AFFIDAVIT

STATE OF COLORADO
CITY AND COUNTY OF DENVER

I, Britt D. Banks, state and affirm as follows:

1. I am the Associate General Counsel of Newmont Gold Company, a subsidiary of Newmont Mining Company, and in such capacity have knowledge of the matters contained herein.

2. On July 12, 1996, Newmont Mining Corporation's affiliate, Newmont Mineral Exploration, B.V., entered into two "Agreements for Mineral Prospecting, Exploration, Development and Production of Gold" with the No. 2 Mining Enterprise, and economic enterprise wholly owned by the government of the Union of Myanmar.

3. Effective July 12, 1997, Newmont Mineral Exploration, B.V. terminated both of its Agreements with the No. 2 Mining Enterprise.

4. Aside from winding up the affairs of Newmont Mineral Exploration B.V., neither Newmont Mining Corporation nor any of its affiliates is currently conducting any activities which constitute "doing business with Burma (Myanmar)" within the meaning of Chapter 130 of the Massachusetts Acts of 1996.

/s/ Britt D. Banks /jurat omitted/

Testimony of
Deputy Assistant Secretary David Marchick
before the Maryland House of Delegates
Committee on Commerce and Government Matters
March 25, 1998

Thank you for the opportunity to speak with you today. I would like to discuss with you OUT shared interest in promoting U.S. national security, strengthening protection of human rights and enhancing U.S. competitiveness.

Let me begin by placing state sanctions in the context of exports, jobs and competitiveness.

The world is growing increasingly interdependent. In 1970, U.S. imports and exports were equivalent to 13 percent of gross domestic product (GDP). Now that figure is 30 percent. The United States once again has become the world's number one exporter, the world's largest manufacturer of automobiles, the world's premier agricultural exporter, and the world's leading producer of semiconductors. From coast to coast business is growing, real wages are rising and inflation is under control. Truly, the American economy has become the envy of countries around the globe.

While this stunning success is attributable to many factors, American participation in an increasingly rule-based global trading system is among the most important. International trade is a vital component of our economic strength at home and abroad. Since 1993, more than a third of our economic growth has come directly from exports. Much of this growth in exports is due to the performance of states like

Maryland.

The Port of Baltimore is the gateway to the global market place for exports and imports to and from Maryland and the entire country. From 1987 through 1996, Maryland goods exports increased 129.1% to $3.5 billion. In the first 6 months of 1997, Maryland's goods exports were running at a rate of $4.1 billion -- up 37% since 1992. Maryland's interests international trade translates into almost 50,000 jobs -- high paying jobs that pay 15% higher wages than other jobs in Maryland

Our prosperity as a nation depends on our ability to compete in international markets. Ninety-six percent of the world's consumers live outside of the U.S., many of them in dynamic, emerging markets in Latin America and Asia that are growing much faster than our traditional export markets. We can benefit from their growth-but only if their markets are open to our products, since our markets are already open to theirs.

America benefits from free trade that is also fair trade, and this Administration has worked hard to ensure that other countries live up to their word. We have frequently used the World Trade Organization's (WTO) dispute settlement system to enforce our rights. We have filed and won more dispute settlement cases in the WTO than any country in the world for a wide spectrum of U.S. industries from agriculture, to manufacturing, services industries and intellectual property. We have benefitted from clearer rules on government procurement which has opened billions of dollars of procurement opportunities for U.S. firms and workers. Working toward creating a level playing field has benefitted Maryland. For example, the WTO's Government Procurement

Agreement has enhanced access for Maryland companies in key markets such as Japan and Europe.

Now let me turn to the issue of sanctions. Economic sanctions are an important foreign policy tool that provides an option between diplomacy and the use of force. They are used when other measures have been insufficient and when their imposition is likely to change the behavior of the offending state.

Sanctions are not a "one-size-fits-all" foreign policy tool, however. When the U.S. must apply sanctions, the Administration seeks to design a sanctions regime to target the specific vulnerabilities of the sanctioned country so as to ensure the best and fastest possible response to our concerts, while minimizing the damage to other important U.S. interests. Sanctions are intended to highlight misconduct by regimes, and alter the behavior which threatens our national interests. Sanctions can address misconduct in the areas of human rights, terrorism, narcotics, weapons of mass destruction, and other areas where such conduct is considered unacceptable by world standards.

To maximize their effectiveness, we prefer sanctions that have multilateral support and participation. Multilateral economic sanctions are not only more effective vis-a-vis the target, but they also show unity of international purpose, minimize damage to U.S. competitiveness, and distribute the sanctions burden across responsible countries.

However, we are prepared to use unilateral sanctions when important national interests are at stake. The Clinton Administration has at times employed sanctions to promote human rights, isolate rogue regimes and advance our economic

interests in the global economy. In response to extreme actions taken by the Nigerian government, the President has imposed a visa ban on Nigerian senior officials and has banned military sales and services to Nigeria. He has banned new U.S. investment in Burma to prevent the repressive regime in Burma from benefitting from its misdeeds. He signed the Iran-Libya Sanctions Act to send a strong message to Iran and Libya to halt state sponsored terrorism and the acquisition of weapons of mass destruction. Simultaneously with these actions, the Administration has launched vigorous diplomatic initiatives to encourage other countries to pursue our shared goals of changing the behavior of pariah regimes, improving the conditions under which their citizens live and working towards a world free from the threat of terrorism and weapons of mass destruction.

While we recognize and share state governments' frustration and often outrage at certain countries' unacceptable behavior, we are concerned about the growing number of state and local measures and the message they send to the rest of the world. The President has made it clear that this Administration will challenge the unacceptable behavior of rogue states wherever they are in the world. The Secretary of State has told other countries that the U.S. is prepared to pay the cost of leadership and, if necessary, to go it alone when it comes to delivering a clear message of condemnation to these regimes. Secretary Albright has not pulled any punches -- as diplomats often do -- in expressing the United States' outrage at egregious violations of human rights and international norms in countries like Cuba, Nigeria, Afghanistan, Burma and Iran. But state sanctions often can confuse the message the United States

sends and impede our ability to build coalitions to focus on the targeted regime. Let me outline a few concerns we have about state sanctions.

Our first concern is whether sanctions are effective in pursuing the goals we all share. As I said before, to be most effective, sanctions should have multilateral support and participation wherever possible. While the U.S. is the largest economy and most important country, sanctions by the U.S. alone may not have the desired impact because they can be sometimes and often are circumvented. Sanctions often are ineffective unless they are supported by other key countries.

Second, from the Department of State's perspective, we are concerned that state and local sanctions may impair the President's ability to send a clear and unified message to the rest of the world. As the nation to which the world looks for leadership, the United States has the obligation to project a coherent and consistent message. We would like to work with you to send a clear message to oppressive regimes. But ad hoc and scattered actions at various levels of government, however well-intentioned, can do more harm than good in achieving the desired objective. They can impede the President's and Secretary of State's conduct of foreign policy. They also can create conflicts with our allies with whom we need to work to achieve our common goals.

For example, a variety of state and local officials recently began considering the imposition of various economic sanctions on Swiss banks and other Swiss institutions in order to force an accounting for assets of Holocaust victims. Our goal is to provide justice for Holocaust victims, not to punish the Swiss people or their government. The U.S. Government

has already issued a very hard-hitting report and the Swiss have taken strong steps to account for the past. But now is the time for cooperation with the Swiss, not confrontation. According to Stuart Eizenstat, Under Secretary of State and the President's point person on this project, state actions at this time are unwarranted and counterproductive, particularly given positive steps the Government of Switzerland is taking to address the issue. Such actions threaten to harden Swiss public opinion against staying this positive course. These sanctions efforts also complicate our government's ability to develop a healing and reconciliation process that helps uncover the truth.

Third, if states do *want* to express concerns or viewpoints on particular human rights abuses or other objectionable behavior by foreign regimes, we would like to work with them to ensure that these actions complement U.S. foreign policy objectives and are consistent with our international treaties and agreements. As I mentioned before, as the world's largest exporter, no country does better than the United States when countries follow internationally developed trade rules. At the same time, the United States must also play by the rules. If state and local sanctions are perceived to violate the rules, they can cause counterproductive disagreements with nations that share the same values and are otherwise inclined to follow our lead in pursuing our foreign policy goals.

Fourth, we are also concerned about the impact of sanctions on our domestic economy. While sanctions serve an important foreign policy purpose, they are not without cost. The cost is measured in foregone economic opportunities by countries that put these measures in place. One private sector

group estimates foregone opportunities for the U.S. alone in 1996 at $15-$19 billion dollars in unrealized exports and the loss of over 200,000 jobs in export-related sectors of our economy.

Often state and local sanctions have unintended effects that are counterproductive or divert attention from their original goal. In June 1996, Massachusetts enacted a law applying a price penalty, for purposes of bidding on procurement opportunities, on companies that have business operations in Burma. The European Union and Japan have initiated dispute settlement consultations in the World Trade Organization over this law. Our trading partners allege that the Massachusetts law violates certain provisions of the Government Procurement Agreement.

We are working closely with the Commonwealth of Massachusetts on this issue, just as we continue to work with the European Union, Japan and others to improve the situation in Burma. We have made a lot of progress. Let me be clear. We will defend the rights of the United States in the WTO dispute settlement process. But we must be honest in saying that the threatened WTO case has been an irritant and has diverted the United States' and Europe's attention from focussing where it should be -- on Burma.

We share Maryland's concerns about human rights in Nigeria and the necessary democratic reforms which must take place to improve the lives of Nigerian citizens. In its 1997 human rights report, the Administration issued a stinging account of the Nigerian Government's human rights abuses. The report holds, "The [Nigerian] Government's human rights

record remained dismal. Throughout the year, [Sani] Abacha' s Government relied regularly on arbitrary detention and harassment to silence its most outspoken critics." The report goes on to note, "Security forces continued to commit extrajudicial killings arid use excessive force to quell antigovernment protests...". The report concludes that citizens of Nigeria do not have the right to change their government by peaceful means and that despite the announced timetable for transition from military to multiparty rule, there was little meaningful progress toward democracy. This scathing report demonstrates that we are in agreement with Maryland about the deplorable human rights and democratic situation in Nigeria and we welcome the voice of the people of Maryland demanding change.

We do have concerns, however, about the way Maryland has chosen to respond to the Nigerian situation Specifically, certain provisions in the bill will make it difficult for us to continue our efforts to work with our trading partners to implement effective multilateral measures to influence reform in Nigeria. These provisions raise serious questions, much like the Massachusetts Burma law, and we would like to work with you to ensure that we don't expose ourselves~ to a potential WTO challenge.

Finally, I know that questions have been raised about the constitutionality of state sanctions. I'm not here to debate those legal issues, but I can say that state and local sanctions that are inconsistent with our obligations to our political allies and trading partners can have the practical effect of interfering with the President's ability to conduct our foreign policy. Too often we find ourselves answering criticism about certain state

and local actions rather than focussing on the poor behavior of the object of those actions.

My main message today is one of partnership -- an offer to work closely with you to respond to egregious threats to our national security, our interest in enhancing human rights, or in promoting other of our national values. We have had constructive private conversations with a number of Maryland legislators on this issue. We have made it clear to them and we want to make it clear to you that we fully support Maryland's desire to be heard, not silenced. Just as we have reached out to you, we have also consulted with the National Governors' Association, the Association of State Attorneys General, the National Conference of State Legislators, and the National Association of State Procurement Officers.

I hope we call work together to send the right message to governments that do not respect the basic human rights of their citizens. Our aim is not to try to halt state actions -- rather, we would like to work with you to encourage the judicious and appropriate use of sanctions. We can inadvertently aid pariah states when the United States does not speak with one voice. Measures by states that transgress our international obligations embroil us in disputes that could easily be avoided. Discord with our allies weakens opposition to rogue regimes and trade disputes can impair the cooperation that is essential bringing about meaningful change in the lives of the citizens of Nigeria and elsewhere.

Once again, thank you for the opportunity to speak on these important issues. I look forward to working with you as

we move forward.

Restricted Burma Purchase List

U.S. Companies

Abercrombie and Kent (A&K) Int'I Inc.
Angelina Hardwood Sales
American Vision Professional
*Arvin Industries Inc. (s)
*Atlantic Richfield Co. (s)
Carlson Holdings Inc.
*Caterpillar (s)
China Resource Development Inc.
Consolidated Stores Corp.
Dean Hardwoods Inc.
DHL Airways
East Asia Gold Corp.
*Emerson Electric Co.
*Federal Express Corp. (s)
First General Serices
*Halliburton Co. (s)
*HFS Inc. (s)
Indo-China Express Inc.
Inland Water Transport
*Interdigital Communications Corp.
*Interpublic Group of Cos. (s)
JCB (International) Credit Card
Johnson & Johnson Inc.
King Koil Licensing Co. Inc.
KMD Computer Ltd.
*McDermott International (s)
Northwest Airlines
Ocean Cruise Line Inc.
Pacific Architects & Engineers
Pan American Enterprises

Procter & Gamble Co. (s)
Servcorp
Showcase Entertainment Inc.
Silver Sea Cruise
*Smith International Inc. (s)
Teak Imports International
*Texaco (s)
*Textron Inc. (s)
*Unocal Corp. (s)
United Parcel Service
United Technologies Corp.
*York Holdings Corp.
Zin International
Zippo Manufacturing Co.

Non-U.S. Companies

A & S International Co. Ltd.
A.P.G.Technologies Pte. Ltd.
ABB Asea Brown Boveri Ltd.
ABN Amro Bank Ltd.
Acer Inc.
Adman Club Co. Ltd.
AEA International
Aeolus (Dong Feng) Trucks & Buses
Ajinomoto Co., Inc.
Alcatel Alsthom SA
All Nippon Airways Co. Ltd.
Allied Container Servces
Altius Houtagenturen B.V.
Amara International Singapore
Amer Group Ltd.
Andre Hesse & Co. GmbH
Antares Trading GmbH

Arnold Otto Meyer
Asia Associates Bangkok Ltd.
Atlantic Laboratories Corp. Ltd.
Atlantic Outline Myanmar Co. Ltd.
B.A.T. Industries PLC
Bagan Hotel Co. Ltd.
Baiyoke Group
Baiyoke Kandawgyi Hotel Co.
Ban Hock Hin Engineering Co. Pte. Ltd.
Bangkok Bank of Commerce
Bangkok Container Lines
Bank of Ayudhya
Bank of Commerce Malaysia
Bank of Tokyo-Mitsubishi Ltd.
Banque Francaise Du Commerce Exterieur
Banque Indosuez
Banque Nationale de Paris
BCE Inc.
Bell Metal Industries
Berjaya Industrial Bhd.
Berliner Bank
Beta Funds
Bionorica GmbH
BMW (Bayerische Motoreweke)
BOC Group PLC
Bollinger Furriere
Boustead Shipping Agencies Sdn. Bhd.
Bousteadco Singapore Ltd.
Bridgestone Corp.
British Airways
British Petroleum Co. PLC
Broken Hill Proprietary Co. Ltd.
Burmah Castrol PLC
C&P Holdings Pte. Ltd.
C. Melchers Gmbh & Co.

CBM Corp.
Central Floating Hotel Ltd.
Chemical Co. of Malaysia Bhd. (CCM)
Chiyoda Corp.
CibaGeigy Ltd.
Comfort Group
Consolidated Spectra Ventures Ltd.
Constance Carroll Holding Ltd.
Costa Crociere S.p.A.
Credit Agricole (Caisse Nationale du)
Credit Commercial de France
Croisieres Paquet
Cycle and Carriage Ltd.
Daewoo Corp.
Dai-Ichi Kangyo Bank
Daiwa Institute of Research
Daiwa Securities Co. Ltd.
Daihoff Larsen & Hornemann (DLH)
Damarc Srl
Det Ostasiatiske Kompagui A/S
Deutsche Bank
Deutsche Lufthansa AG
Deutsche Telekom
Development Bank of Singapore Ltd.
DHL International Ltd.
Diethelm Holding AG
Diplomatic Business Pte. Ltd.
Discoverey Helicopters
Diversified Mineral Resources Ltd.
Dong Feng Motor Industry Corp.
Dopharma International B.V.
DP Intertrade
Dresdner Bank AG
E.Merck Beteilgungen oHG

Eagle (Myanmar) Co. Ltd.
Eagle Company Ltd.
Earth Industrial PLC
East Asiatic Co. SA
Eastern & Oriental Express
Emerald Rose Garden Co. Ltd.
Empire Oil Co. (Pacific) Ltd.
EPG Travel Co. Ltd.
Europ Continents
Evian
Exe Design Co. Ltd.
Exe Sakura Co. Ltd.
Export Import Bank of Korea
Export Import Bank of Thailand
FA. Voigt & Co. B.V.
Fidelio Software Co. Ltd.
First Automotive Works (FAW)
First Dynasty Mines Ltd.
Fraser & Neave Ltd.
Fritz Anders GmbH & Co.
Fuji Bank Ltd.
Fuji Photo Film Co. Ltd.
Fujita Corp.
Fulbrim (S) Pte. Ltd.
Gainwell Medimart
Gemco International B.V.
Globe Industries GmbH
Golden Shell Co. Ltd.
Grand Metropolitan PLC
Guinness PLC
Hakuhodo Inc.
Haaako
Hazama Corp.
Health Corp. of Singapore (HCS)

Heinrich Feldmeyer GmbH & Co. K.G.
Honda Motor Co.
Hotel Propenties Ltd.
HSBC Holdings PLC
Hunting PLC
Hyundai Corp.
Idris Hydraulic Bhd.
IHC Caland NV
Infornatics Holding Ltd.
Indian Airlines Ltd.
Indochina Goldfields Ltd.
ING Bank International
Interdent Holding AG
International Panoraina Resources Corp.
Itochu Corp.
Invest-Import Yugoslavia
Isuzu Motors Ltd.
Italian-Thai Development
Itochu Corp.
Ivanhoe Capital Corp.
Jade Enterprise
Japan Air Lines
Japan Trade Service Inc.
JCB International (Canada) Ltd.
Johannes Schuback & Sohne GmbH
JVC Victor Co. of Japan Ltd.
Kailis (M.C.) Holdings PLC
Kajima Corp.
Karl Danzer Furnierwerke GmbH
Kelang Port Management
Kemayan Corp. Bhd.
Keppel Bank
Keppel Corp. Ltd.
KLM Roval Dutch Airlines
Konica Co.

Koor Industries
Korea Exchange Bank
Krung Thai Bank Co. Ltd.
Kunming Heavy Machinery Plant
Kunming Int'l Economic and Tech.
Kuok Singapore Ltd.
Kuoni AG
Laboratories Biocodex
Lion Nathan International o. Ltd.
Loxley Public Co. Ltd.
L.P. Holding Co. Ltd.
Landmarks Bhd.
Lao Aviation Co.
Leeward Capital
Longreach Gold Oil Ltd.
M.O. Air Sytem Inc. (M.O. Tourist)
Mackie International Group PLC
Malayan Banking Berhad
Malaysia Airline System Bhd. (MAS)
Mamee-Double Decker (M) Blid.
MAN AG
Mario Bernucci SpA
Marubeni Corp.
MASA Telecom Inc.
Matsushita Electric Industrial Co. Ltd.
Mazda Motor Corp.
Meiwa Marine and Industrial Pte. Ltd.
Merchantile Interaational Petroleum Inc.
Michelin, Cie. Generale des Establissements
Milesluck Co. Ltd.
Mindoro Resources Ltd. (MDRO/CDN)
Mita Industrial Co. Ltd.
Mitsubishi Construction
Mitsubishi Corp.
Mitsubishi Electric

Mitsubishi Heavy Industries
Mitsubishi Materials
Mitsubishi Motors Corp.
Mitsui & Co. Ltd.
Mitsui Construction Co. Ltd.
Myanmar Hotels International Ltd.
Myanmar Macau International
Myanmar MCG Corp.
Myanmar Swan Investment Ltd.
National Machinery Import & Export Corp.
Nestle S.A.
Newscom Pte. Ltd.
Nichimen Corp.
Nikken Rentacom Co. Ltd.
Nikko Shoji Co.
Nippon Investment & Finance Co. Ltd.
Nippon Kokan Kaisha (NKK Corp.)
Nippon Oil
Nissan Motor Co.
Nissho Iwai Corp.
Nutricia
Nutricta NV
Northern Telecom Ltd.
Nouveau Marketing Co. Ltd.
Nova Corp.
NTN Corp.
Okura & Co. Ltd.
Oversea-Chinese Banking Corp. Ltd.
Overseas Union Bank
Pacific Arc Exploration
Pacrim Energy NL
Pakistan International Airlines
Peter Cremer GmbH & Co.
Petroleum National Behard (Petronas)
Platinum Private Ltd.

Pohang Iron and Steel
Pokka Corp.
Premier Oil PLC
Prime Utilities Bhd.
PSA Peugeot Citroen SA
PT Asia Cellular Satellite Systems (ACeS)
PT Astra International
PT Cumawis
PTT Exploration & Production PLC
Puukeskus Oy
Richemont, Co. Financiere
Rolls-Royce PLC
Royal Bruei Airlines
Royal Dutch Petroleum Co.
Royal Lake Hotel Co. Ltd.
*Schlumberger Ltd. (s)
SCT (Siam Cement Trading)
Samsung Corp.
Sanwa Bank
Sanwa Trading Co. Ltd.
Sea Containers Ltd.
Segye Corp.
Seiko Corp.
SKF AB
Shangri-La Hotels Ltd.
Sharp Corp.
Shell Transport & Trading Co. Plc.
Siam Citv Bank Ltd.
Siam Syntech Construction Co.
Siemens AG
Singapore Airlines Ltd.
Singapore Teclinologies Industrial Corp. Ltd.
Sony Corp.
Ssangyong Group
Standard Chartered Bank

Stevens Paper & Board B.V.
Straits Steamship Land Ltd.
Sum Cheong International Ltd.
Sumitomo Corp.
Sy Cip Gorres Veuyo and Co.
System-Built Myanmar Ltd.
Taiga Consultants Ltd.
Taisei Corp.
Tamasu Co. Ltd.
Telefonaktiebolaget LM Ericsson
Telrad Telecom. & Electronic Industries
Temasek Holdings Ltd.
Thai Airways International PLC
Thai Farmers Bank Ltd.
Thai Military Bank Ltd.
Til Ltd.
Toshiba Corp.
Total S.A.
Toyota Motor Corp.
Traders Yangon Co. Ltd.
Trafalger House PLC
Trevi SpA
UCB S.A.
Union Chimique Belge (UCB) S.A.
United Communications Industry Public Co.
United Engineers Ltd.
United Info Summit (UIS)
UPSA Laboratories
VEBA AG
Venice Simplon Orient Express
Victor Co. of Japan
Victoria Garment Manufacturing Co. Ltd.
Victoria Group
Wheelock Group
Wing Tai Holdings Ltd.

Wo Kee Hong Holdings Ltd.
Worldcare Travel Insurance
Wong Yin Chong Pte. Ltd.
Yangon Wood Industries Ltd.
YTL Corp. Bhd
Yunnan Machinery Import & Export Corp.
YWIL

*Parent Companies with Subsidiaries

Subsidiaries of U.S. Companies

Subsidiaries of Arvin Industries Inc.

AVM, Inc.
Arvin International Holdings
Gabriel Europe, Inc.
Gabriel Ride Control Products Inc.
Gabriel S.A.
Maremont Corp.
Maremont Exhaust Products Inc.
Q International Inc.
Roll Coater Inc.
Space Industries Int'l Inc.

Subsidiaries of Atlantic Richfield Co.

Arco Alaska Inc.
Arco Chemical Co.
Arco Transportation Alaska Inc.
Vastar Resources Inc.

Subsidiaries of Caterpillar

A/O Nevamash
Advanced Fuels L.L.C.
Advanced Technology Services Inc.
Anchor Coupling Inc.
Balderson Inc.
CM Human Services Co., Ltd.
CMEC Co. Ltd.
Carter Machinery Co. Inc.
Caterpillar Industrial Inc.
Caterpillar Industrial Products Inc.
Caterpillar Mexico S.A. de C.V.
Caterpillar Overseas S.A.
Caterpillar of Delaware Inc.
Compsolven Corp.
Energy Services International Group Ltd.
Energy Services International Ltd.
Engine Services Specialilst Inc.
Immobililiaria Conek S.A.
Mec-Track S.r.L.
Nexus Internatinal Inc.
OTSG Inc.
P.T. Natra Raya
Roady Ready Inc.
SCM Operator Training Co. Ltd.
SCM System Service Co. Ltd.
Sagami GS Co. Ltd.
Servtech Ltd.
Solar Turbines Canada Ltd.
Solar Turbines Inc.
Solar Turbines International Co.
Solar Turbines S.A.
Technologia Modificada S.A. de C.V.
Turbinas Solar S.A. de C.V.
Turbinas Solar de Venezula, C.A.
Turbo Technologia de Reparaciones S.A. de C.V.

Subsidiaries of Emerson Electric Co.

Andre Cocard S.A. R.L.
Angar Scientific Co. Inc.
Appleton Electric Co.
Appleton Electric Ltd.
Applied Concept Inc.
Asco Investment Corp.
Ascoletric Ltd.
Asomatica S.A. de C.V.
Ascomation (NZ) Ltd.
Ascomation Pty. Ltd.
Ascoval Industria E Commercio Ltd.
Atelier de Bobinage de Meteurs Elec.
Belzon & Richardot S.A.R.L.
Betrand-Polico S.A.
Branson Ultrasoncis Corp.
Branson Ultrasonics S.A.
Brooks Instrument B.V.
Brooks Instrument K.K.
Buehler Ltd.
C.E. Set S.R.L.
CDP International Inc.
Carbide Blast Joints Inc.
Chromalox GmbH
Clairson Inc.
Clairson International Corp.
Clairson de Mexico
Commercial Cam Co. Inc.
Compania de Motores Domestics
Componentes Avanzados
Compresreur Mechaniques
Construction Electriques du Nord
Constructions Electriques de Beau

Control Concepts Corp.
Control Techniques East Asia .
Control de Temperatura S.A. de C.V.
Controles Electromecanicos De Mex
Copeland Corp.
Copeland Electric Corp.
Credo Tool Co.
Crouzet Appliance Controls S.A.
Crouzet Applliance Controls SpA
D'Orleans S.A.R.L.
DML Industrial Products Inc.
Digital Appliance Controls
E.G.P. Corp.
EECO Inc.
EMR Holdings Inc.
Electronique du Sud-Quest S.A.
Emerson Capital Funding Inc.
Emerson Electric (U.S.) Holdng Co.
Emerson Electric (UK) Ltd.
Emerson Electric Canada Ltd.
Emerson Electric GmbH
Emerson Electric Nederland B.V.
Emerson Electric Oversea Finance Co.
Emerson Puerto Rico Inc.
Emerson Europe S.A.
Emersona Finance Co.
Emerson Holding Co.
Emerson Japan Ltd.
Emerson Pacific Pte Ltd.
Emerson Since S.p.A.
Emerson Technologies GmbH & Co.
Emersub XIX Inc.
Emersub XL Inc.
Emersub XLI Inc.
Emersub XLII Inc.

Emersub XXV Inc.
Emersub XXXVIII Inc.
Establissements J. Michael
Establissements Sevener S.A.
Establissements Trepau S.A.
Exac Corp.
Fisco Ltd.
Fisher Controls International Inc.
Fisher-Rosemount B.V.
Flow Technology Inc.
Flow Technology S.A. de C.V.
Fluidocontrol S.A.
France S.A.
Fusite B.V.
Fusite Holding Corp.
Gilmour Inc.
Gilmour Manufacturing Co.
Girard Transmissions S.A.
Hanover Advertising Services Inc.
Hocking NDT Ltd.
IMI Kft.
Industriae Comerco Ltda.
Inno Ven III Corp.
Joucomatic Controls Inc.
Joucomatic S.A.
Kay-Ray/Senall Inc.
Krautkramer Branson Inc.
Krautkramer France S.A>
Krautkramer GmbH
LaFrancaise de Manutention S.A.
Leroy-Somer Maroc S.A.
Leroy-Somer S.A.
Liebert Corp.
Lorraine Services Electrique
Louisville Ladder Corp.

M.I.S. Kerebel Provence S.A.R.L.
M.I.S. Poitouraine S.A.R.L.
M.I.S. Societe Peaucelle
M.L.S. Holice Spol. S.r.o.
MLS. Industries Inc.
MOTODOUR S.A.
Maintenance Industriale Service
Maintenace Industrielle de Vierzon
Maintenance Industries Service
Marcel Oury S.A.R.L.
McGill International Inc.
McGill Manufacturing Co.
Metaloy Inc.
Mezierres S.A.
Micro Motion Inc.
Motores Hermeticos del Sur
Motores U.S. de Mexico S.A.
Naegelen S.A.
Navarre Services S.A.R.L.
Nippon Fisher Co. Ltd.
Omet S.A.
Pl Components Corp.
PEPT Investment Corp.
Poteau Moderne du Sud-Quest S.A.
Prestcold GmbH
Primark DML Inc.
Quest Electro Services S.A.R.L.
Radiel Bobinage S.A.R.L.
Reluctance Motors Ltd.
Ridge Tool (Australia) Pty. Ltd.
Ridge Tool Co.
Ridge Tool Manufacturing Co.
Ridgid Ferramentas E. Maquinas
Ridgid Italia S.r.l.
Ridgid Werkzeuge AG

Ridgid France S.A.
Rosemount Inc.
SWECO Europe S.A.
Skil AG
Societe Anonmye de Mecanique
Societet Commerciale des Ateliers
Societe Con Folentaise de Metalurgie
Societe De Mecanique et D'Electro
Societe DeReparation Electro
Societe Nouvelle Silvain S.A.R.L.
Sotrac S.r.l.
Stresstel Corp.
Sweco Canada Inc.
Switched Reluctance Drivers Inc.
Tata Liebert Ltd.
Taundromeda Beteiligungs GmbH
Tech-Met Canada Co.
Tekmar Co.
Termo-Controles de Juarez
Therm-O-Disc (Canada) Ltd.
Therm-O-Disc Inc.
Transmisiones de Potencia Emerson
U.S.E.M. de Mexico SA de. C.V.
VA Export Co.
VA Holding Co.
VAC Data Management Inc.
VAC Service LP
Valmet-Rosement Inc.
Vermont Am. Corp. Fountain Inn
Vermont American (Australia) Ltd.
Vermont American Canada Inc.
Vermont American Corp.
Vermont Westa Werkzeugbau
Viet Services S.A.R.L.
Western Forge Corp.

Wiegand S.A. de C.V.
Xomox Corp.
Xomox International GmbH
Yorba Linda International Inc.

Subsidiaries of Halliburton

G & H Management Co.
GSI Saudi Arabia Ltd.
Geosource Service Corp.
HGS Enterproses Inc.
Howard Humphreys & Partners Ltd.
Howard Humphreys Group Ltd.
MIHC Inc.
Overseas Marine Leasing Co.
Seaforth Maritime Group Ltd.

Subsidiaries of HFS Inc.

Days Inn of America Incv.
General Franchise Systems Inc.
HFS Gaming Corp.
Parks Inns International Inc.
Ramada Franchise Systems Inc.
Super 8 Motels Inc.
TM Acquisition Corp.
Villager Franchise Systems Inc.

Subsidiaries of Interpublic

A.C.E. Advestising Creation Marketing N.V.
ABM Kershaw Ltd.
Adware Systems Inc.
Alan S. Newman Associates Inc.
Alice SNC France

Allen Brady & March Ltd.
Ammirati & Puris Holdings Inc.
Ammirati & Puris Inc.
Ammirati & Puris Ltd.
Artel Studio Ltd.
Asian Media Corp.
Asset Recovery Group Inc.
Audour, Sounm Larue/Scali, McCabe, Sloves, S.A.
Baader-Lang-Behnken GmbH
Below the Line Agency Ltd.
Benito Advertising Inc.
Boisen & Partners Annonsbyra AB
Boisen & Partners Annonsbyra AB
Boxer Film Production AB
Brilliant Pictures Ltd.
Brindfors Intressenter Invest AB
Brindfors Production Oy
Broadcast Audit Bureau
Brompton Advertising Ltd
Brompton Group Ltd.
Brompton Promotions Ltd.
Bureau of Commercial Information Ltd.
Bureau of Commercial Research Ltd.
Business Science Research Corp. Inc.
C.L.A. Commercial Productions Ltd.
Cabell Eanes Inc.
Campbell Ewald Werbeagnator GmbH
Casablanca Productions
Cato Design Inc.
Centro Media Planning-Buying-Booking s.r.l.
Cinestar S.A.
Clarin, S.A.
Coachouse Ltd.
Colourwatch Ltd.
Colourwheel Ltd.

Creation Sarl
Creative Services GmbH
Daily & Associates
Data Gold B.V.
De Roeck En Heering P.R. Consultants N.V.
De Toffel & PG s.r.l.
Delacroix S.A.
Delacroix et Gervasi S.A.
Deo Nederland B.V.
Direct Creations S.A.
E.C. Television/Paris S.A.
Encuadre S.A.
Epic (Event & Programming Int'l Consultancy) Ltd.
Europa Immagine & Comunicazione s.r.l.
Events & Programming Int'l Consultancy, S.A.
Fab& S.A.
Face Photosetting Ltd.
Fieldplan Ltd.
France C.C.P.M.
FreemantleFulfillment House
GDL Inc.
Goldschmidt Dunst & Lawson Group
Gotham Group Inc.
Harrison Communication, Lt.
Harrisonm Publicidad de Columbia S.A.
Harrod & Mirlin Inc.
Healthcare Capital Inc.
Heinrich Hoffman & Partner GmbH.
Howland Street Studio Ltd.
IPG Nederland B.V.
Impulse International Oy
Inciativas de Medios, S.A.
Inciativas de Meias-Activadades Publicitarias Ltda.
Infernal Sarl
Infoplan (Hong Kong) Ltd.

Infoplan International Inc.
Initiativ Media GmbH
Initiativ Verkaufsforderung GmbH
International Business Services Inc.
International Poster Management Ltd.
Inversionistas Asociados, S.A. de C.V.
JBR Filialen A/S
JBR Films A/S
JBR Invest A/S
JBR Reklamebyra A/S
K&S Werbeagentur Marketing und Consulting GmbH
KenLarton Ltd.
LCF&L Inc.
LFS Inc.
LHSB Management Services Ltd.
Lighthold Ltd.
Link Ajams Limited Sirketi
Lintas
Lowe
Martin Agency Inc.
Max W.A. Kamer AG
Mac W.A. Kamer GmbH
Mac W.A. Kamer GmbH
McCann
McCann-Erickson
McLaughlin
Media Solutions (Proprietary) Ltd.
Merchant and Partners (Sydney) Pty. Ltd.
Merchant and Partners Australia Pty. Ltd.
Message Mediaformedling AB
Milvange/GR2 A/S
Mohr Massey
NRG Vitamins
North Light Ltd.
Orbit International (1990) Ltd.

Orkestra Ltd.
P. Strating Promotion B.V.
P.C.M. Marketing
PCS Wergeantur GmbH
PMI-Mediaporssi
PPA Professionals de Promocao Associados Ltda.
Phillips-Ramsey Co.
Pool Media - PMI S.A.
Pool Media International (P.M.I.) S.r.l.
Pool Media International Aps
Pool Media International S.A.
Poundhold Ltd.
Programming Media International-PMI S.A.
Programming Media International B.V.
Promaction Corp.
Public Media Service
Quest & Associates Inc.
Radio Home Shopping Network
Reclame-Adviesbureau Via B.V.
Relationship Marketing Ltd.
Results Machine Ltd.
Ronnberg & Co. AB
S.C. Advertising (UK) Ltd.
S.F.A. S.A. France
SP3 Conseil S.A.
SP3 Conseil S.A.
SP3 Lyon S.A.
SP3 S.A.
Sales Communications International Pty. Ltd.
Salesdesk Ltd.
Scali, McCabe, Sloves Inc.
Signature APS
Smithfield Lease Ltd.
Specialized Media/Marketing Services Inc.
Sports Call Inc.

Spolink Inc.
Sprint Advertising S.A.
Sprint S.A.
Stenrich Group Inc.
Stowe, Bowden, Wilson Ltd.
Talbot Television Ltd.
Tavistock Advertising Ltd.
Television Marketing Group Inc.
Time Machine Inc.
Tinker (Jack) Advertising Inc.
Triad Assurance Ltd.
Two Six Seven Ltd.
Typo-Wenz Artwork GmbH
US Yellow Pages Inc.
Ulla Anderson Mediaaktiebolag AB
Underline Design Group Pty. Ltd.
Unimedia S.A.
Universal
Universal Ideas S.A.
Universal Media S.A.
Universal s.r.l.
University Sports Connection
Vibalm S.A. France
Werne & Co. Annonsbyra AB
West Can Communications Ltd.
Western
Womena - Myynninvaulhdittajat Oy
ZML Software Systems Inc.
Zet Zet B.V.

Subsidiaries of McDermott International

American Inc.

Babcock Wilcox Industries Limited
Babcock Wilcox Investment Co.
Creole Insurance Co. Inc.
Hudson Engineering Corp.
Hydro Marine Services Inc.
J. Ray McDermott, S.A.
McDermott (Holland) B.V.
McDermott Inc.
McDermott International Investments Co. Inc.
Power Systems Operation Inc.
The Babcock Wilcox Co.
Varsy International N.V.

Subsidiaries of Smith International

Omega II Insurance Ltd.
SI Nederlands B.V.

Subsidiaries of Texaco

American Overseas Petroleum Ltd.
Caltex Petroleum Corp.
Four Star Oil & Gas Co.
Heddington Insurance Ltd.
P.T. Caltex Pacific Indonesia
TEPI Holdings Inc.
RRMI Holding Inc.
Texas Petroleum

Subsidiaries of Textron Inc.

ARS Two Inc.
Avco Community Developers Inc.

Avco Corp.
Avco Financial Services Inc.
Avco Overseas Services Corp.
Avdel PLC
Bell Helicopter Asia (Pte.) Ltd.
Bell Helicopter Services Inc.
Bell Helicopter Supply Center B.V.
Cessna Aircraft Co.
Cessna Finance Corp.
Cone Drive Operations Inc.
Davidson International Services Inc.
Davidson Overseas Investment Inc.
Davidson Textron Inc.
McCord Corp.
Micro-Prescision Operations Inc.
Micromatic Operations Inc.
Paul Revere Corp. (The)
Paul Revere Equity Sales Co.
Paul Revere Investment Mgmt. Co.
Paul Revere Insurance Co.
Paul Revere Protective Life Insurance Co.
Paul Revere Variable Annuity Insurance Co.
Textron Atlantic Inc.
Textron Financial Corp.
Wolverine Metal Specialists Inc.

Subsidiaries of Unocal Corp.

Phillippine Gethermal Inc.
Union Oil Co. of California

Subsidiaries of York Holdings Corp.

Aucgak Undustries S.A.
Bristol Compresors Inc.

Cordonis Acceptance Corp.
Evcon Holdings Inc.
Frigid Coil/Frick Inc.
IMI Kft.
Miller-Picking of Mississippi Inc.

Subsidiaries of Non-U.S Parent Companies

Subsidiaries of Schlumberger Ltd.

Anadrill Holdings Inc.
Darnell Financial Services Ltd.
GECO A.S.
GECO Prakla Inc.
Prakla Seismos AG
Schlumberger B.V.
Schlumberger Technology Corp.
Sedco Forex International Inc.
Sedco Forex Offshore Int'l Ltd.
Triton Holdings Ltd.
Triton Industries Inc.

THE SECRETARY OF STATE

April 17, 1998

Dear Colleagues and Friends,

Welcome to Washington and the Department of State. The theme of your conference is "Are States Necessary?" As Secretary of State, my answer is an emphatic yes! State governments are our partners in keeping America competitive and secure. We count on the states to work with is to promote American exports and investment, to advance our democratic ideals, and to build new partnerships between our people and institutions and the people and institutions of nations, regions and cities all around the world. This kind of engagement in world affairs is essential to keep our economy growing, real wages rising, and inflation under control. The stunning economic success we have already experienced in the last few years is due in no small measure to the partnership between states and the federal government, at home and on the world stage.

State and local governments are now more directly affected than ever by events overseas in areas such as migration, environmental protection, trade and investment. Many states have a particularly important stake in deepening our ties with Mexico and Canada, and are helping to improve cross-border cooperation. That State Department welcomes the role state and local leaders can play in helping to shape our engagement overseas. Indeed, as Secretary of State, I want to do all I can to ensure that Americans are interested in foreign policy, and I view the involvement of our state governments as a welcome expression of public concern.

At the same time, it is important that state and local actions strengthen the President's ability to run an effective and coordinated foreign policy. President Clinton and I recognize the authority of state and local officials to determine their own investment and procurement policies, and the right -- indeed their responsibility -- to take moral considerations into account as they do so. And we certainly share the concerns many stated have expressed about human rights abuses abroad. The Clinton Administration has worked vigorously to promote freedom in nations where it is denied; we have done so through diplomacy, through sanctions where we believe they can be effective, and even, where critical interests are at stake, through force.

Our challenge is to ensure that America speaks with a single voice. That is why we want to work in partnership with you to ensure that state and local actions are effective and consistent with our international obligations, and that they complement the objectives of our foreign policy as well as our efforts to mobilize global support for the goals we share.

Sincerely,

/s/

Madeleine K. Albright

United States Department of State

Washington, D.C. 20520

April 20, 1998

Dear Mr. Chairman:

I understand that the Intergovernmental Relations Committee will hold a hearing April 21, on the Alarcon-Alatorre-Goldberg motion which proposes a review of ordinances enacted by other municipalities restricting business with Burma and the drafting of a similar City of Los Angeles ordinance relative to Burma.

While we recognize and share state and local governments' frustration or even outrage at certain countries' unacceptable behavior, we believe that state and local measures should be addressed with care. Multilateral support and participation are the most effective means of achieving human rights objectives. Ad hoc and scattered actions at various levels of government, however well-intentioned, can do more harm than good in achieving the desired objective. The Administration had similar concerns last year when the state of California was considering a comparable bill regarding Burma.

The State Department would like to work with you and the City of Los Angeles to respond to egregious threats to our national security and to advance our interest in enhancing human rights or in promoting other of our national values. We share the sponsors' concerns about human rights in Burma and the necessary democratic reforms which must take place to improve the lives of the Burmese citizens. That concern is reflected in the numerous actions the Administration has taken to promote change in Burma. Only last year, the President banned new U.S. investment in Burma in addition to sanctions already in place to

spur the repressive regime in Burma.

We are serious in our offer to speak with you to discuss any ideas you might have on how we can work together to address our shared concerns about Burma or any other foreign policy issue. Through a cooperative dialogue, we can more effectively reach our shared goal of democratic and human rights reform in Burma. As background to the Administration's position, please find attached a copy of the testimony delivered on October 28,1997, to the California State Assembly by David Marchick, Deputy Assistant Secretary (DAS) for Trade Policy and Programs. The testimony outlines some of the concerns that the Department had with the draft bill in California. We hope this information will be helpful to you and the members of the Committee. We look forward to hearing from you on the deliberations of this motion. Please contact Mr. Marchick or me at (202) 647-2532 directly with any questions or information you would like to share regarding the motion. We would appreciate your entering on the record this letter and attached testimony.

Sincerely,

/s/ Alan P. Larson

Assistant Secretary

Bureau of Economic and Business Affairs

Councilman Nate Holden

Chairman, Intergovernmental Relations Committee

Los Angeles City Council

City Hall East, Room 317

200 N. Main Street Los Angeles, CA 90012 ***

Statement by Stuart E. Eizenstat

U.S. Under Secretary of State for Economic, Business and Agricultural Affairs

Before the Hevesi Committee

July 1, 1998

I am grateful for the opportunity today to express once again the views of the U.S. Government on these important issues being considered by New York City Comptroller Alan Hevesi and his committee colleagues from state and local entities from across the country. We respect the Committee's process and we share their determination that justice be done. While we share this common purpose, the U.S. Government is also determined to see that justice be achieved promptly and in ways that maintain both the openness of our nation's financial markets and a positive relationship between the United States and Switzerland.

Since last December, at the request of both sides, I have convened intensive talks in an effort to facilitate a settlement of the class action suits by Holocaust victims against the three major Swiss banks. We have met on about a dozen separate occasions in formal discussions together with innumerable other efforts to find a just settlement. The parties have made significant progress in agreeing on a detailed structure for a potential settlement, in obtaining a coordinated negotiating position by the plaintiffs' attorneys and major NGOs, and in achieving some narrowing of major differences on the settlement amount. But they have not been able to bridge their remaining differences at this time.

No one is more disappointed than my U.S. Government colleagues and I that the parties were not able to reach an agreement given the amount of time, effort and energy all of us, including the parties, have put into this, and most importantly, the profound matters at stake in this litigation. We fully appreciate the important issues raised in these cases by the plaintiffs, many of whom are U.S. citizens. These talks presented an historic opportunity for resolving this matter that may not come again soon. The alternative of lengthy and contentious litigation serves no one's interests. Given this, we call upon the parties to reflect on the consequences of protracted litigation: it means a delay in achieving a measure of justice for the unique class of aging and frail Holocaust survivors who would most benefit from a just and prompt settlement; and it represents a missed opportunity for a major step toward closure of a difficult chapter in Switzerland's history.

Consistent with the terms of the confidentiality agreement governing these talks and my role as a neutral facilitator in this process, we will not comment further on the status or conduct of the talks.

We hope that this missed opportunity will not lead to recriminations and hardening of positions on both sides. This matter is before a federal court and should be resolved there if it cannot be resolved through the mutual agreement of the parties.

These developments also put added importance on the need for a thorough and prompt conclusion to the Volcker process of reviewing dormant accounts in Switzerland that may have belonged to Holocaust victims, to which Chairman Volcker and his Committee are committed.

The U.S. Government favors a just and prompt resolution of the issues at stake with the three major Swiss banks and other Swiss institutions. Sanctions - however well - intentioned or carefully calibrated - will not make it easier to achieve closure in this complex and sensitive matter. We believe that state and local sanctions in this matter are wrong both in principle and practice: wrong in principle because our nation should speak with one voice in matters of foreign policy and international commerce and because they are not warranted; wrong in practice because they may be counter-productive and fail to advance the goal of a prompt and just settlement.

Far from compelling the banks to do more, the imposition of sanctions may lead to an opposite reaction which will delay still further the resolution of these issues. Even the threat of sanctions has reinforced an unfortunate climate of inflexibility in Switzerland. While Switzerland is undertaking a comprehensive series of steps to address Holocaust-era issues, it must continue on this positive course if it is to achieve closure. Imposing sanctions would make it more difficult for all Swiss institutions to do so.

Moreover, we must safeguard the preeminence of the United States as the most open financial market in the world. By imposing sanctions such as those under consideration, New York City and other jurisdictions would risk endangering not only competitiveness in attracting and retaining world-class firms and the income they generate and the jobs they support, but also call into question the openness and attractiveness of all American financial markets.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

NATIONAL FOREIGN TRADE COUNCIL,
Plaintiff, v.

CHARLES D. BAKER, in his official capacity as Secretary of Administration and Finance of the Commonwealth of Massachusetts, and PHILMORE ANDERSON, III, in his official capacity as State Purchasing Agent for the Commonwealth of Massachusetts.

No. 98CV-10757-JLT

AFFIDAVIT OF KATHLEEN MOLONY

I, Kathleen Molony, under oath state as follows:

1. I am Acting Executive Director of the Massachusetts Office of International Trade and Investment (MOITI). I have held that position since March 30, 1998. Prior to my appointment as Acting Executive Director, I was Deputy Executive Director. MOITI is an executive agency of the Commonwealth of Massachusetts. The powers and duties of MOITI are set forth in Massachusetts General Laws ch. 23A, §§ 23A-28. Copies of these laws are attached as Ex. A. The primary purposes of MOITI are to help Massachusetts companies increase their business in international markets and to seek international investment in Massachusetts.

2. MOITI provides services to Massachusetts

companies with international business interests. These services include:

-- the introduction of Massachusetts companies to important international markets through trade missions and shows;

-- consultations with Massachusetts companies on international trade;

-- the management of visits by foreign trade delegations to Massachusetts. MOITI also manages (with the Massachusetts Port Authority) three overseas trade offices in Jerusalem, Berlin, and Guangzhou, and a trade representative in Mexico City. These trade representatives gather international market data and introduce Massachusetts businesses to officials of foreign governments. They also assist foreign companies that wish to invest in Massachusetts.

3. I attach as Exhibit B a true copy of a summary of trade missions for Massachusetts companies led by MOITI during the years 1991-1997. During that period, MOITI organized twenty-three trade missions and visited forty-two countries (including Hong Kong). A total of more than four hundred Massachusetts firms attended these trips. These firms included Digital Equipment Corp., Raytheon Co., IBM Corp., BankBoston, Polaroid Corp., Genzyme, Deloitte and Touche, Shiva Corp., Donaldson, Lufkin & Jenrette, Ernst & Young, Gillette Co.,Goldman Sachs & Co., Fidelity Investments, and KPMG Peat Marwick.

4. Massachusetts has twenty-three "sister-state" and other bilateral agreements with foreign governments or trade promotion organizations. These agreements promote trade and other activities between Massachusetts and these governments and organizations. A list and summary of these agreements is attached as Exhibit C. True copies of examples of these agreements with foreign governments are attached as Exhibit

D.

5. I attach as Exhibit E a true copy of the 1997 report of MOITI.

6. To the best of my knowledge, the statements in each of the attached exhibits are true.

Signed under the pains and penalties of perjury this ____ day of May, 1998.

/s/ Kathleen Molony Executive Director

Congress of the United States
Washington, DC 20515

July 22, 1998

Charlene Barshefsky
U.S. Trade Representative
Winder Building, Room 201
600 17th Street, NW
Washington, D.C. 20508

Dear Ambassador Barshefsky,

As members of the U.S. Congress from the State of Massachusetts, we are deeply disturbed by the decision by the European Union and Japan to formally challenge the Massachusetts Burma selective purchasing law at the World Trade Organization (WTO).

We are wholly supportive of fostering good relations between Europe, Japan and the United States. However, we strongly believe that it is highly inappropriate for the European Union and Japan to involve themselves in the internal affairs of Massachusetts. It is not the place of the European Union and Japan to dictate how the Massachusetts legislature and state government should spend its own taxpayers' money. The people of Massachusetts have long vested the power to levy taxes and spend public money with our elected representatives, not European and Japanese bureaucrats.

We also note that the Massachusetts Burma selective purchasing law is strongly supported by the legitimate leader of the Burmese democracy movement, Aung San Suu Kyi. The

leader of the party that won the 1990 Burmese elections, Aung San Suu Kyi remarked in a recent interview that selective purchasing laws are very effective means of restoring democracy in Burma. She also specifically praised the Massachusetts Burma law.

We fear that, by placing European and Japanese corporate interests first, the European Union and Japan risk undermining their principled stand against the Burmese military junta. In March, the European Commission revoked Burma's tariff preferences because of the military junta's pervasive use of forced labor. The new British government recently cut its support for trade promotion in Burma and has "not ruled out the possibility of further measures, including economic sanctions" against the illegal military junta. Japan has called for dialogue between the military junta and the democracy movement.

Opinion in Europe in particular towards business in Burma is best typified by the recent and unanimous resolution on Burma passed by the European Parliament. The resolution called on the European Union to enact economic sanctions on Burma. Moreover, in its resolution, the European Parliament specifically urged the European Commission not to take action against the Massachusetts Burma law under the WTO dispute settlement procedures.

We ask the U.S. Trade Representative to weigh the support for the Massachusetts Burma law from the peoples of Europe, Japan, Massachusetts and, most importantly, Burma itself. We strongly urge the U.S. Trade Representative to oppose the unfair and inappropriate efforts by the European Union and Japan to force Massachusetts to amend its Burma law.

Rep. Barney Frank

Rep. Richard Neal

Rep. Edward Markey
Rep. Joseph Moakley
Rep. Joseph Kennedy
Rep. John Olver
Rep. Martin Meehan
Rep. James McGovern
Rep. John Tierney

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No. 98-CV-10757 (JLT)

NATIONAL FOREIGN TRADE COUNCIL,)
)
Plaintiff,)
)
-v.-)
)
CHARLES D. BAKER, in his official capacity)
as Secretary of Administration and Finance of)
the Commonwealth of Massachusetts, and)
PHILMORE ANDERSON, III, in his official)
capacity as State Purchasing Agent for the)
Commonwealth of Massachusetts,)
Defendants.)

JOINT STIPULATION

Plaintiff, the National Foreign Trade Council ("NFTC") and defendants Charles D. Baker and Philmore Anderson, III

(collectively, "defendants") hereby agree and stipulate to the facts set forth below. Each party reserves its right to object to the relevance and/or materiality of any fact to which that party has stipulated.

1. Because defendants reside in this judicial district,and because the events giving rise to the claims made in this lawsuit occurred in this judicial district, this judicial district is the proper venue for this lawsuit.

2. Plaintiff NFTC is a nonprofit corporation, organized and existing under the laws of the State of New York. Founded in 1914, the NFTC has historically represented its members' interests in the area of foreign trade.

3. The NFTC's membership consists of approximately 580 United States manufacturing corporations, financial institutions, and other United States firms having substantial international operations or interests. A true and correct copy of the NFTC's membership list as of the date of this stipulation is attached hereto as Exhibit 1.

4. The NFTC is authorized by its members to represent their interests in international-trade-related matters before Congress, the Executive Branch, the regulatory agencies, and the courts.

5. The NFTC's Board of Directors has adopted a

resolution that authorizes the NFTC, on behalf of its members, to bring suit to challenge laws like the Massachusetts Burma Law. A true and correct copy of that resolution is attached hereto as Exhibit 2, and a true and correct listing of the NFTC's Board of Directors as of the date of this stipulation is attached hereto as Exhibit 3.

6. The Massachusetts Burma Law was signed into law on June 25, 1996 and became effective 90 days later, on September 29, 1996.

7. The Massachusetts Burma Law is currently being enforced.

8. Defendant Charles D. Baker is Secretary of Administration and Finance of the Commonwealth of Massachusetts. Defendant Baker has supervisory authority over the setting of procurement standards and the exercise of procurement authority over Massachusetts state agencies that collectively purchase at least $2 billion in goods and services annually. Defendant Philmore Anderson, III has operational authority over the same setting of procurement standards and exercise of procurement authority.

9. Defendant Baker is responsible by statute for establishing and maintaining the "Restricted Purchase List" required by the Massachusetts Burma Law, and for providing

that list to state agencies and authorities required to comply with the Law. Under M.G.L.A. ch. 7, § 22J(a), the "restricted purchase list shall contain the names of all persons currently doing business with Burma (Myanmar)." If the Massachusetts Burma Law were declared by a court of competent jurisdiction to be unconstitutional, or its enforcement enjoined by such a court, defendant Baker would no longer maintain the Restricted Purchase List, nor would he provide it to any state agency or authority.

10. Defendants Baker and Anderson have the authority to promulgate regulations, applicable to any Executive Office, Department, Agency, Office, Division, Board, Commission, or Institution within the Executive Branch of the Commonwealth of Massachusetts, as those terms are defined in 801 CMR § 21.01(2) and 21.02, unless otherwise provided by law, that ensure compliance with the Massachusetts Burma Law and certain other procurement-related statutes.

11. Defendant Baker has the authority to determine whether, for an agency (or a particular project) over which he has authority, the Massachusetts Burma Law supersedes the general competitive bidding requirements set forth in the Code of Massachusetts Regulations, 801 CMR § 21.06.

12. If defendants Baker and Anderson were enjoined from enforcing the Massachusetts Burma Law by a

court of competent jurisdiction, or the Law were declared unconstitutional by such a court, defendants would advise state agencies under their authority or supervision that they would be required to follow the competitive bidding requirements set forth in the Code of Massachusetts Regulations, 801 CMR § 21.06, notwithstanding the provisions of the Massachusetts Burma Law.

13. Defendants are required by the Massachusetts Burma Law to prepare an annual report detailing compliance with the Massachusetts Burma Law, and to file that report with the respective clerks of the Senate and House of Representatives of the Commonwealth. If defendants were enjoined from enforcing the Law by a court of competent jurisdiction, or if the Law were declared unconstitutional by such a court, they would no longer prepare and/or file that report.

14. Defendant Anderson is responsible for preparing the Commonwealth's Procurement Policies and Procedures Handbook. A true and correct copy of relevant excerpts from the Commonwealth's most recent Procurement Policies and Procedures Handbook is attached hereto as Exhibit 4. Defendants have the authority to require, and have required, individuals within agencies under the defendants' supervisory authority to follow this handbook in exercising procurement authority. The most recent version of the handbook includes provisions designed to ensure compliance with the Massachusetts Burma Law. If defendants were enjoined from enforcing the Law by a court of competent jurisdiction, or the

Law were declared unconstitutional by such a court, defendants would no longer include provisions designed to ensure compliance with it in the Commonwealth's Procurement Policies and Procedures Handbook.

15. Defendant Baker has supervisory authority over procedures for the procurement of commodities or services, as set forth in the Code of Massachusetts Regulations, 801 CMR §§ 21.01 and 21.02. If defendant Baker were enjoined from enforcing the Massachusetts Burma Law by a court of competent jurisdiction, or the Law were declared unconstitutional by such a court, he would no longer enforce that law with respect to these types of procurements of commodities or services.

16. Defendant Philmore Anderson, III, is the State Purchasing Agent for the Commonwealth of Massachusetts. In this position, defendant Anderson heads the Operational Services Division, which is charged with the duties and obligations established by M.G.L.A. ch. 7, § 4A(a). Defendant Anderson is responsible — either directly or through delegation — for procuring goods and services for the Commonwealth's administrative and executive departments. This purchasing activity amounts to at least approximately $2 billion per year. Unless enforcement of the Massachusetts Burma Law is enjoined, or it is declared unconstitutional, Anderson is obligated to enforce the Massachusetts Burma Law in making the purchases subject to the Law. If the

Massachusetts Burma Law were enjoined by a court of competent jurisdiction or held unconstitutional by such a court, he would no longer apply that Law to these purchases.

17. The state agencies or authorities (as those terms are defined in the Massachusetts Burma Law, 7 Mass. Gen. Laws § 22G) that fall under defendants' authority and over which they exercise procurement authority are all Executive Offices, Departments, Agencies, Offices, Divisions, Boards, Commissions, or Institutions within the Executive Branch of the Commonwealth of Massachusetts, as those terms are defined in 801 CMR §§ 21.01(2) and 21.02. Unless enforcement of the Massachusetts Burma Law is enjoined by a court of competent jurisdiction, or it is declared unconstitutional by such a court, defendants are obligated to apply that Law to procurements sought by these agencies. If defendants were enjoined from enforcing the Massachusetts Burma Law, or the Law were declared unconstitutional, they would no longer apply that Law to procurements sought by these agencies.

18. The transcript of the legislative debates attached hereto as Exhibit 5 is a true, complete and accurate transcription (with the exception of non-material errors) of the Massachusetts House Debate regarding H2833, which took place on July 19, 1995, and of the Massachusetts Senate Debate regarding H2833, which took place on March 20, 1996.

19. A true and correct copy of then-Governor

William Weld's June 25, 1996 signing statement regarding the Massachusetts Burma Law, Commonwealth of Massachusetts, Executive Department Press Release, is attached hereto as Exhibit 6.

20. The Massachusetts Burma Law restricts state agencies from purchasing goods or services from any company "doing business with Burma (Myanmar)" as those terms are defined by the Law. As described in Paragraph 9, above, these companies are placed on the restricted purchase list. The Law requires that "in establishing the restricted purchase list, the Secretary shall consult United Nations reports, resources of the Investor Responsibility Research Center, the Associates to Develop Democratic Burma, and other reliable sources." This list is referred to as the "Restricted Purchase List."

21. In creating the Restricted Purchase List, the Commonwealth obtained a list of companies believed to be doing business in Burma (Myanmar) from the Investor Responsibility Research Center. Commonwealth personnel then compared the activities of each company on the list with the statutory definition of doing business with Burma (Myanmar), and made a preliminary assessment as to which companies should be placed on the list. The Commonwealth then sent a letter signed by defendant Anderson to each such company to inform the company that it would be placed on the list, and gave the company the opportunity to provide affidavits or other documentation to convince the Commonwealth that it

should not be placed on the list. In some cases, representatives of such companies met with Commonwealth personnel to discuss their proposed placement on the list. After receiving the company's response, if any, the Commonwealth made a final decision as to whether to place an individual company on the Restricted Purchase List. As the list is updated, the Commonwealth follows this same procedure with respect to companies that it intends to add to the list. To date, no company has sought judicial review of a determination by the Commonwealth that it is doing business with Burma (Myanmar). In their review of the possible placement of companies on the list, Commonwealth officials have not reviewed Burmese law or judged the credibility of Burmese officials.

22. In response to letters received by defendant Anderson informing them that the Commonwealth intended to place them on the Restricted Purchase List, dozens of companies submitted written objections, some of which included sworn affidavits, requesting either that they be removed from, or not be placed on, the List. Defendant Anderson decided whether or not such companies should remain on the List, and though a number were either removed from, or never placed on, the List, a number of these objecting companies are still listed.

23. In response to letters received from defendant Anderson informing them that the Commonwealth intended to

place them on the Restricted Purchase List, at least seven companies, of which at least three were NFTC members, specifically informed the Commonwealth (by letter and affidavit) that they were terminating all business ties with Burma (Myanmar) in order to comply with the Massachusetts Burma Law, and that they therefore wished to remain off the Restricted Purchase List. (True and correct copies of correspondence from these companies to the Commonwealth are attached hereto as Exhibits 7 through 13.) The Commonwealth removed all seven of these companies from the Restricted Purchase List. The three NFTC members that were removed from the List had previously bid on and received Massachusetts contracts with state agencies under the defendants' supervision, and they specifically advised Massachusetts that they should not appear on the Restricted Purchase List because they ceased (or, in one case, because a subsidiary ceased) doing business in Burma (Myanmar) as a result of the Massachusetts Burma Law.

24. The Restricted Purchase List released in April 1998 is the latest version of the list that defendant Charles Baker is required by statute to maintain. That list contains all companies known to the Commonwealth that are "doing business with Burma" as that phrase is defined by M.G.L.A. ch. 7, § 22G. The Commonwealth of Massachusetts does not distribute the Restricted Purchase List directly to other state or local governments or private parties; however, the Restricted Purchase List is a public record under Massachusetts law and is available on the Internet and upon request. (A true and correct

copy of the April 1998 version of the Restricted Purchase List is attached hereto as Exhibit 14.)

25. Currently, 346 companies appear on the restricted purchase list. Forty-four of these are companies domiciled in the United States; 15 of the 44 are Fortune 500 companies, whose total combined annual revenue is over $246 billion. Many foreign companies with U.S. subsidiaries and affiliates also appear on the restricted purchase list.

26. Under current Commonwealth procurement law and policy, when Massachusetts agencies solicit or accept bids for contracts, they are required to obtain, and have obtained, from the person seeking to provide those goods or services a statement under penalty of perjury detailing the nature and extent of that person's business ties with Burma (Myanmar), if any.

27. Under current Commonwealth procurement law and policy, a Massachusetts agency soliciting a contract can award the contract to a company on the Restricted Purchase List only if that agency certifies in writing both that the procurement is essential and that compliance with other provisions of the Massachusetts Burma Law would eliminate the only bid or offer, or would result in inadequate competition.

28. Under current Commonwealth procurement law

and policy, an agency soliciting a contract can award the contract to a company doing business in Burma (Myanmar) only if there is no comparable low bid or offer by a company that is not on the Restricted Purchase List.

29. Under current Commonwealth procurement law and policy, when a bid or offer is submitted by a company on the restricted purchase list, agencies subject to the Massachusetts Burma Law are required to automatically add, and have added, ten percent to the offer, and that offer is considered to have been at the higher price for the sole purpose of comparing the offer with other bids.

30. Thirty-four NFTC members are listed on the Massachusetts "Restricted Burma Purchase List" released in April 1998.

31. These thirty-four NFTC members are: Atlantic Richfield Co.; Carlson Holdings Inc.; Caterpillar; Emerson Electric Co.; Halliburton Co.; Johnson & Johnson Inc.; McDermott International; Procter & Gamble Co.; Smith International Inc.; Texaco; Textron Inc.; Unocal Corp.; United Technologies Corp.; ABB Asea Brown Boveri Ltd.; ABN Amro Bank Ltd.; Bank of Tokyo-Mitsubishi Ltd.; British Petroleum Co. PLC; Broken Hill Proprietary Co. Ltd.; Credit Agricole (Caisse Nationale du); Honda Motor Co.; ING Bank International; Matsushita Electric Industrial Co.; Michelin, Cie. Generale des Establissements; Mitsubishi Corp. International; Mitsui & Co. Ltd.-U.S.A.; Nestle S.A.-U.S.A.; Nissan Motor

Co. of North America; Northern Telecom Ltd.; Sharp Corp.; Shell Transport & Trading Co. PLC; Siemens AG-U.S.A.; Sony Corp. of America; Standard Chartered Bank; and Toyota Motor Corp. - Sales U.S.A.

32. At least one of the NFTC's individual member companies that has bid on and been awarded contracts with Massachusetts state agencies under defendants' supervisory authority prior to the enactment of the Massachusetts Burma Law would have bid for the opportunity to provide further goods or services to the Commonwealth of Massachusetts, but did not do so because of its knowledge of the Commonwealth's current practice of automatically increasing by ten percent the offer price of those bids submitted by companies on the Restricted Purchase List. Members of the NFTC believe that preparing a contract bid for agencies or authorities of the Commonwealth of Massachusetts is expensive.

33. As of the date this stipulation is entered, apart from the situation described in paragraph 38, so far as NFTC is aware, no company that is a member of the NFTC has made any bid with any procurement agency within defendants' supervisory authority that was increased by ten percent because that company was listed on the Restricted Purchase List or because that company does business with Burma (Myanmar).

34. As of the date this stipulation is entered, the NFTC knows of no contract with any state agency under

defendants' supervisory authority, where an NFTC member submitted a bid and the contract was not awarded to a current NFTC member because that member was on the Restricted Purchase List, although one company's bid was increased by ten percent as described in paragraph 38.

35. Under the Commonwealth's procurement policy and practice, price is frequently a significant factor considered in deciding whether to award a contract, although other factors are also frequently considered to be significant.

36. At least three of the NFTC's individual member companies severed business ties with Burma (Myanmar) after the enactment of the Massachusetts Burma Law citing the Massachusetts Burma Law as the reason for that decision. Prior to the Law's enactment, these companies engaged in substantial business both with and in Burma (Myanmar). Discontinuation of such business is not required by any federal law or executive order. These same individual NFTC members have in the past entered into contracts with Massachusetts state agencies within defendants' jurisdiction, and intend to bid on such contracts in the future. These companies believed that they would lose future business with Massachusetts as a result of the Massachusetts Burma Law if they did not sever business ties with Burma (Myanmar).

37. Two other of the NFTC's individual member companies severed business ties with Burma (Myanmar) citing human rights issues in Burma (Myanmar), as set forth in

Exhibits 30 and 31, attached.

38. Pursuant to the Massachusetts Burma Law, procurement bids made on Statewide Photocopier Contract No. OFF-02 by three companies on the Restricted Purchase List were increased by ten percent during the process of evaluating those bids. None of those companies was a member of the NFTC as of the date of the bids or the date of the awards. One of those companies is a member of the NFTC as of the date of this stipulation.

39. On at least one occasion, the Massachusetts Water Resources Authority rejected all bids received on two contracts (Contract Nos. 6354 and 6355) after those bids had been reviewed and analyzed because the bid solicitation did not include notice of the Massachusetts Burma Law, and because the Authority failed to obtain certifications, under penalty of perjury, from the bidders to the effect that they were not doing business in Burma (Myanmar), as required by the Massachusetts Burma Law.

40. A true and correct copy of a letter from European Union ("EU") Ambassador Hugo Paeman to then-Governor Weld, is attached hereto as Exhibit 15.

41. On June 20, 1997, the EU formally noted its position that the Massachusetts Burma Law violated the World

Trade Organization's ("WTO") "Government Procurement Agreement," to which the United States is a signatory. United States — Measure Affecting Government Procurement: Request for Consultations by the European Commission, World Trade Organization (WT/DS88/1), June 20, 1997. (A true and correct copy of this document is attached hereto as Exhibit 16.)

42. On July 18, 1997, Japan formally noted its position that the Massachusetts Burma Law violates the Government Procurement Agreement and requested WTO consultation on its claim. *See* United States — Measure Affecting Government Procurement: Request to Join Consultations Communication from Japan, World Trade Organization (WT/DS95/1), July 18, 1997. (A true and correct copy of this document is attached hereto as Exhibit 17.)

43. To date, Massachusetts remains the only state to have enacted a selective purchasing law applicable to companies that do business in or with Myanmar.

44. Eighteen municipal jurisdictions impose similar restrictions. *See* Organization for International Investment, *State and Municipal Sanctions Report*, Dec. 1, 1997, at 3. (A true and correct copy of this report is attached hereto as Exhibit 18.) Dozens of local jurisdictions have either considered or passed similar restrictions aimed at companies doing business with countries other than Myanmar. *Id.* at 1-2, 3.

45. Each year the agencies and authorities under the defendants' supervisory authority purchase at least approximately $2 billion of supplies and services. These purchases are covered by the Massachusetts Burma Law.

46. Foreign trade with the Union of Myanmar generates nearly $2.3 billion in revenues each year. The country is a major source of products such as oil, gas, and timber.

47. Some number of companies historically have done business with the Commonwealth of Massachusetts and with or within Myanmar.

48. Certain NFTC members have, on occasion, directly encouraged legal reforms in foreign countries and, where warranted, have presented positions to international organizations. On occasion, certain NFTC members have asked foreign governments to change their laws and practices concerning child labor.

49. Certain NFTC members have bid for contracts to provide goods or services to, and have sought governmental permits from, foreign countries, including Burma (Myanmar).

50. Certain NFTC members have bid for contracts

to provide goods or services to companies or individuals in foreign countries, including Burma (Myanmar).

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51. A true and correct copy of the Investor Responsibility Research Center's publication entitled "Country-Specific State and Local Selective Purchasing Laws As of September 1997" is attached hereto as Exhibit 19.

52. A true and correct copy of notes from Commonwealth Representative Byron Rushing's September 25, 1997 Remarks at the Burma Seminar in Stockholm, Sweden is attached hereto as Exhibit 20.

53. A true and correct copy of an article by Michael Grunwald appearing in the February 1, 1997 edition of *The Boston Globe* entitled *Trade Tiff Widens Over State 'Burma Law'* is attached hereto as Exhibit 21.

54. A true and correct copy of an article by Isagani de Castro published on July 28, 1997 by Inter Press Service entitled *South-east Asia: Despite its Weight, ASEAN Carries Burma* is attached hereto as Exhibit 22.

55. A true and correct copy of the July/August 1997 Foreign Policy Bulletin entitled *U.S. Imposes Ban on New Investment in Burma; E.U., ASEAN Fail To Follow* is attached

hereto as Exhibit 23.

56. A true and correct copy of an article entitled *Democracy Activist Urges Sanctions Against Burma* that appeared in *The Boston Globe* on July 19, 1996 is attached hereto as Exhibit 24.

57. A true and correct copy of an article by Alistair Horne entitled *Battle In Burma* that appeared in the *Wall Street Journal* on March 25, 1997 is attached hereto as Exhibit 25.

58. A true and correct copy of a letter from the Massachusetts Congressional delegation to U.S. Trade Representative Charlene Barshefsky dated July 22, 1998 is attached hereto as Exhibit 26.

59. A true and correct copy of Minutes from the February 19, 1998 Sitting of the European Parliament is attached hereto as Exhibit 27.

60. True and correct copies of several documents produced to the Commonwealth by the NFTC are attached hereto as Exhibit 28.

61. True and correct copies of excerpts from a report by the United States Department of Labor entitled *The*

Apparel Industry Codes of Conduct: A Solution to the International Child Labor Problem? are attached hereto as Exhibit 29. The full report appears at http://www.ilr.cornell.edu/library/e-archive/ChildLabor.

62. A true and correct copy of a letter dated June 22, 1992 from Sabrina Johnson, Levis Manager, Corporate Communications, to C.B. Loeb, Franklin Research and Development, is attached hereto as Exhibit 30.

63. A true and correct copy of a letter dated October 12, 1994 from Sarah Patterson, Liz Claiborne, Inc. Director of Public Relations, to Simon Billenness, Senior Analyst at the Franklin Research Development Corporation, is attached hereto as Exhibit 31.

64. A true and correct copy of a transcript of Secretary of State Madeleine K. Albright's July 23, 1997 Address and Question and Answer Session to The Pacific Council on International Policy and The Los Angeles World Affairs Council is attached hereto as Exhibit 32.

65. A true and correct copy of an article entitled *USA-Engage Outlines Possible Challenge of Massachusetts Burma Law* that appeared in the August 15, 1997 issue of *Inside U.S. Trade* is attached hereto as Exhibit 33.

66. A true and correct copy of a letter from the Massachusetts Congressional Delegation to Japanese Prime Minister Hashimoto dated February 3, 1997 is attached hereto as Exhibit 34.

67. A true and correct copy of an article by Yawu Miller entitled *State Rep. is on Front Line of Burma Struggle* that appeared in the October 9, 1997 issue of The Ethnic Newswatch is attached hereto as Exhibit 35.

68. A true and correct copy of a February 28, 1995 letter from Rep. Byron Rushing to Rep. Christopher Hodgkins and Sen. Warren Tolman, Committee on State Administration, Feb. 28, 1995 is attached hereto as Exhibit 36.

69. A true and correct copy of selected excerpts of Under Secretary of State Stuart Eizenstat's June 25, 1997 statements before the House Committee on Banking and Financial Services of the 105th Congress is attached hereto as Exhibit 37.

70. A true and correct copy of Under Secretary of State Stuart Eizenstat's October 23, 1997 testimony before the Trade Subcommittee, House Committee on Ways and Means is attached hereto as Exhibit 38.

71. A true and correct copy of Deputy Assistant Secretary of State David Marchick's October 28, 1997 testimony before the California State Assembly regarding proposed (but ultimately failed) California legislation targeting companies that do business in Myanmar is attached hereto as Exhibit 39.

72. A true and correct copy of Deputy Assistant Secretary Marchick's March 25, 1998 testimony before the Maryland House of Delegates' Committee on Commerce and Government Matters is attached hereto as Exhibit 40.

73. A true and correct copy of an April 20, 1998 letter from Alan P. Larson, Assistant Secretary, Bureau of Economic and Business Affairs, U.S. Department of State to Los Angeles City Councilman Nate Holden regarding a proposed City of Los Angeles ordinance relative to Myanmar is attached hereto as Exhibit 41.

74. A true and correct copy of a July 1, 1998 Statement by Stuart E. Eizenstat, U.S. Under Secretary of State for Economic, Business and Agricultural Affairs, before the Hevesi Committee, is attached hereto as Exhibit 42.

75. A true and correct copy of excerpts from the July 6, 1998 remarks of U.S. State Department Spokesperson Jamie Rubin is attached hereto as Exhibit 43.

Dated: July 24, 1998

Respectfully submitted,

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TRANSCRIPT OF HEARING

U.S. DISTRICT COURT (D. MASS.),

(September 23, 1998)[Original Transcript Pages 12-13]

NATIONAL FOREIGN

TRADE COUNCIL v. BAKER

C.A. No. 98-10757-JLT

THE COURT: Let me ask you a question. It may be of absolutely no significance, but it comes to my mind. You mentioned something earlier in your argument, at least I think you did, that the state might even be barred from a resolution that touched on foreign affairs. Suppose that resolution was in support of the national policy -- in other words, praising the President or the congress for banning participation with Burma -- pick whatever subject you want -- is there a difference if the state is agreeing with the Federal Government, as opposed to prodding the Federal Government over disagreeing with them?

MR. DYK: I don't think it is so much a distinction between whether the state is agreeing or disagreeing with the Federal Government, because the key issue here is whether what the state does is attempting to make foreign policy, and I think, under some circumstances, a mere resolution could be making foreign policy. I think at least statements by Under Secretary Eizenstat and Deputy Assistant Marchick are clear that the whole issue of sanctions and how far to go and what to

say is a very critical element of foreign policy, and that you have to have one entity is the United States Government.

So, even if you have a resolution with no sanctions attached to it, which, of course, is not this case, even if you had a resolution purported to agree with the position of the United States. There are nuances here, and foreign policy is a very delicate matter. It requires flexibility and expertise, which the state simply does not have.

It does not have the foreign policy establishment. It requires the ability to change quickly, rather than to have a situation where the policy is written in stone. And, for all of those reasons, even if there is some parallelism between the state policy and the federal policy, that does not mean that it is not intruding into the area of foreign affairs.

THE COURT: In any event, this is more than a resolution.

MR. DYK: It is far more that a resolution. It is a traditional exercise of foreign policy making. It is condemning a foreign country and imposing sanctions.